

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Mayor's Agent for the Historic Landmark  
and Historic District Protection Act

Public Hearing

North Capitol/Michigan Avenue, N.W.  
McMillan Park Reservoir

9:36 a.m. to 1:35 p.m.

Wednesday, June 3, 2015

Office of Planning  
1100 4th Street, SW, Suite E650  
Washington, D.C. 20024

OLENDER REPORTING, INC.  
1100 Connecticut Avenue NW, #810, Washington, DC 20036  
Washington: 202-898-1108 • Baltimore: 410-752-3376  
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1   Appearances:

2       JUDGE PETER BYRNE, ESQ.,

3       Designated Mayor's Agent

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1   Appearances: (Cont'd)

2   For DC for Reasonable Development:

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1   Appearances: (Cont'd)

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1   Appearances: (Cont'd)

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17      JEFFREY ANDERSON

18      Washington, DC, Reporter

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3       ANNE SELLIN

4       KIRBY VINING

5       TONY NORMAN

6       CHRIS OTTEN

7       JIM SCHULLMAN

8       MARY PAT ROWAN

9       DEBBY HANRAHAN

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1 P R O C E E D I N G S

2 MAYOR'S AGENT BYRNE: All right, ladies  
3 and gentlemen. Let's begin, please. Good  
4 morning. All right, folks. We're coming to  
5 order now, please. Okay.

6 Good morning. I am Peter Byrne, the  
7 designated Mayor's Agent for this matter, which  
8 involves the application to subdivide a portion  
9 of the McMillan Park Reservoir, the Sand  
10 Filtration Site, at 2501 1st Street, Northwest,  
11 for construction of a mixed-use project.  
12 Application is assigned Historic Preservation Act  
13 No. 15-133.

14 This, of course, is a continuation of a  
15 hearing begun on May 18th. We ended with the  
16 cross-examination of Mr. Thakkar, one of the  
17 Applicant's witnesses.

18 So, we will proceed in conformance with  
19 the D.C. Administrative Procedure Act and D.C.  
20 Municipal Regulations Title 10-C, which contain  
21 the rules for procedure of the Mayor's Agent.

22 The order of proceeding will be as

1 follows: any completion of the Applicant's case;  
2 reports or statements by public agency  
3 representatives; statements by affected ANC,  
4 other parties, and other persons in support of  
5 the application; parties and other persons in  
6 opposition to the application; rebuttal by the  
7 Applicant and rebuttal by parties in support of  
8 the application; and surrebuttal by parties in  
9 opposition to the application.

10 So, Ms. Brown, at the conclusion of the  
11 hearing, had you completed presenting your case?

12 MS. BROWN: Yes, sir, we had.

13 MAYOR'S AGENT BYRNE: Okay. Very good.

14 MR. OTTEN: Excuse me, Mr. Byrne. Mr.  
15 Byrne. I'd like to ask if Mr. Steve Callcott is  
16 going to be here. As we all agreed on this date,  
17 he was here -- he said he would be here. My  
18 understanding is that he was supposed to be here  
19 to represent all of the reports that are  
20 essential factor to this.

21 MAYOR'S AGENT BYRNE: I learned this  
22 morning that he is not here.

1           MR. OTTEN: So, that's a critical issue  
2 for our party.

3           MAYOR'S AGENT BYRNE: Okay. Why?

4           MR. OTTEN: Because his name is on the  
5 central reports that has triggered this hearing.  
6 Further, the application, which I've emailed him  
7 about, which wasn't on the record in the initial  
8 hearing, subsequently was sent to me, not in its  
9 full capacity; there are attachments missing -- I  
10 asked him about that.

11           I also asked about the transcript of the  
12 hearing two weeks ago. None of that is still  
13 publicly available on the record for us to review  
14 and to bring. But both those issues, plus the  
15 fact that he's not here now to answer questions  
16 directly about his role in why we're here today  
17 is a real serious issue. It's prejudicing us.

18           We all agreed on this date. He was here  
19 in the room; he agreed that that was a date he'd  
20 be here for.

21           MAYOR'S AGENT BYRNE: Fair enough. I  
22 mean, I learned this morning that he was not

1 going to be here. I'm not sure it's fair to say  
2 that he agreed that he was going to be here. I  
3 think he suggested that the hearing date was a  
4 good date because the room was already reserved.  
5 And he didn't say to me that -- at no point  
6 committed to me that he would be here.

7 But I do agree that it does put it in a  
8 peculiar light. And we're going to have to talk  
9 about that some, I think.

10 Ms. Ferster, do you have any views on  
11 this matter?

12 MS. FERSTER: I think he should be  
13 available for cross examination.

14 MAYOR'S AGENT BYRNE: Ms. Brown?

15 MS. BROWN: I think that the HPRB reports  
16 speak for themselves. I think that the rules  
17 have a complete record of the HPRB action in this  
18 and that there's only a limited instance when the  
19 HPRB Chair may come and speak if there are any  
20 questions. But we have the four corners of the  
21 HPRB action on this matter. And I think that we  
22 can proceed without the staff.

1           MR. OTTEN: Mr. Byrne, he is the central  
2 character in this whole process. His name is on  
3 all of these reports. I was prepared,  
4 intensively prepared to ask him many questions to  
5 understand exactly how he got to his positions  
6 that led to the HPRB decision, which support his  
7 reports.

8           This really does prejudice our party  
9 today. And I understood that it was conferred  
10 amongst the key people that were here that they'd  
11 be able to come back on that date, besides the  
12 fact that this room would be open.

13           MR. DENNEE: If I may, Mr. --

14           MAYOR'S AGENT BYRNE: Identify yourself  
15 for the record.

16           MR. DENNEE: Tim Dennee. I'm with the  
17 Historic Preservation Office.

18           There is nothing in regulation or even  
19 custom that requires the staff to testify. I  
20 frankly, and if you want to swear me in on this  
21 point, I do not know whether Mr. Callcott had  
22 intended to testify or not. I know he was

1 present at the last meeting. He had a trip  
2 scheduled long before this continuation hearing.  
3 He is on the record in many staff reports, and  
4 his testimony in this case before the HPRB is all  
5 written down in transcript. So I don't see how  
6 that can possibly be construed to prejudice  
7 anything or anyone's interest.

8 Frankly, we frequently --

9 MR. OTTEN: Why didn't he inform us?

10 MR. DENNEE: We frequently stand on the  
11 record in many cases, as you know.

12 MR. OTTEN: Mr. Byrne, out of common  
13 courtesy, given that he was here and that he was  
14 to testify two weeks ago -- he was ready to  
15 testify two weeks ago to his reports that are  
16 central to this case, I think if --

17 MR. DENNEE: The fact that he is not --

18 (Cross-talk.)

19 MAYOR'S AGENT BYRNE: One at a time.

20 MR. OTTEN: Excuse me, Mr. Dennee.

21 MR. DENNEE: It's fine. That's fine.

22 You're right.

1           MR. OTTEN: The fact that he did not  
2 inform the parties that he would not be here  
3 today, despite a longstanding commitment, we've  
4 spent many hours preparing questions for this  
5 central figure in this case. It does prejudice  
6 us. The transcript from two weeks has not been  
7 provided to the parties yet, despite emails to  
8 both Mr. Callcott and Mr. Dennee. I don't know  
9 if you received it or not.

10           MR. DENNEE: No.

11           MR. OTTEN: But regardless, we don't have  
12 the transcripts from two weeks ago by which my  
13 closing arguments were supposed to be based on.

14           Further, the application, which Mr.  
15 Callcott provided to the record, is not in full  
16 yet, still, on the record, despite my inquiries  
17 to him. That was part of why I was going to ask  
18 him questions today -- just part.

19           This is really -- it's problematic. It's  
20 definitively problematic for us.

21           MAYOR'S AGENT BYRNE: So, it is true that  
22 the application that he sent was missing the

1 attachments. And I realized that this morning,  
2 and that's why I sent the email to him this  
3 morning.

4 MR. DENNEE: Sent to whom?

5 MAYOR'S AGENT BYRNE: Sorry?

6 MR. DENNEE: The application that he sent  
7 to whom?

8 MAYOR'S AGENT BYRNE: He sent it to the  
9 parties. And there was a question about the  
10 application for subdivision that originally went  
11 to whoever it is -- whoever that --

12 MR. DENNEE: The HPRB, presumably.

13 MAYOR'S AGENT BYRNE: Not the HPRB.

14 MR. DENNEE: No. Okay.

15 MAYOR'S AGENT BYRNE: But whoever the --  
16 the surveyor group who does the initial  
17 subdivisions, and the application is not there.

18 Now, the reality is that I think that  
19 that entire document is irrelevant to the  
20 hearing, because the question that was asked was,  
21 what was the date of the application which was  
22 shown on it? And there's no suggestion that the



1 map attached, which should have been attached to  
2 it shows a subdivision that's different than the  
3 subdivision we're talking about here. It's the  
4 same subdivision. So that there is no -- as I  
5 understand it, there's no information in that  
6 that is actually going to advance the inquiry  
7 here, which has to do with whether the  
8 subdivision is necessary to construct the project  
9 of special merit.

10 MR. OTTEN: That may be true, Mr. Byrne.

11 MS. FERSTER: If I may be heard. I mean,  
12 I can't say that -- you apparently have seen this  
13 map --

14 MAYOR'S AGENT BYRNE: I haven't seen it.

15 MS. FERSTER: -- but I have not seen it.  
16 So I cannot say that there's nothing in this map  
17 that's relevant to the hearing. We haven't seen  
18 it. We don't know what it is.

19 MS. BROWN: If I could be heard, as well.  
20 The application was available at the HPRB  
21 meeting, and it was handed out to anybody in the  
22 room that wanted it. I handed it out.

1           MS. FERSTER: That's not correct. That's  
2 not correct, because Elizabeth Merritt was at the  
3 HPRB meeting. She asked for the map repeatedly  
4 of staff. She asked for the attachments; she was  
5 not provided them.

6           MS. BROWN: And no one asked me, and I  
7 had handouts that I provided. So that's point  
8 number one.

9           Number two, they are the same materials  
10 that were shown in our slide show earlier at the  
11 hearing two weeks ago.

12           Number three, as to whether or not Mr.  
13 Otten is prejudiced, how could he be prejudiced  
14 if he was supposed to be putting his case on two  
15 weeks ago without the transcript?

16           And number four, if he were that  
17 interested in getting the transcript, you can  
18 always call and pay for an expedited copy.

19           MR. DENNEE: Regarding the transcript, we  
20 received it yesterday, although when you're in  
21 the middle of the hearing, is anyone entitled to  
22 a transcript? I mean, if we had managed to

1 somehow be more disciplined and get it done in  
2 one day, nobody would have had been able to refer  
3 to the transcript.

4 MAYOR'S AGENT BYRNE: Yeah, I agree  
5 there's prejudice in not having the transcript.

6 MR. OTTEN: But there is without Mr.  
7 Callcott here, who was here to testify last time.

8 MAYOR'S AGENT BYRNE: Well, there's no  
9 indication that he was going to testify.

10 MR. OTTEN: He came up. He was ready to  
11 present. He was here to present.

12 MAYOR'S AGENT BYRNE: Well, that's not  
13 true --

14 MR. OTTEN: Well, frequently --  
15 (Cross-talk.)

16 MAYOR'S AGENT BYRNE: We never got to  
17 that point of the case because we were --

18 MR. OTTEN: Mr. Gilles Stucker presented.  
19 The next logical conclusion was Steve Callcott.

20 MAYOR'S AGENT BYRNE: Okay. My ruling is  
21 that he was not -- he had never stated that he  
22 was going to testify. He never took the stand.

1 That's --

2 MR. OTTEN: Ruling on the postponement?

3 Then in the alternative, I would ask that  
4 we --

5 MS. FERSTER: I don't think you made a  
6 request for --

7 (Cross-talk.)

8 MR. OTTEN: I did request a postponement  
9 because of the key, central person whose name has  
10 triggered this hearing is not here. I have  
11 requested that postponement. In the alternative  
12 -- I mean, that's the major reason why we're here  
13 today is to ask the gentleman who brought this  
14 report to HPRB to answer the questions of how he  
15 got to his conclusions about why subdivision is  
16 okay, which is why we're here today.

17 MAYOR'S AGENT BYRNE: He never -- he  
18 never -- the reports don't deal with the question  
19 of subdivision because --

20 MR. OTTEN: Yes, they do. January 22nd  
21 --

22 MR. DENNEE: The subdivision report does.

1 And it is contained within itself, as a whole.  
2 Plus, the report that staff gives orally to the  
3 board.

4 MAYOR'S AGENT BYRNE: Right.

5 MR. DENNEE: That's all in the record.

6 I don't understand how somebody can cross  
7 examine someone on testimony that's not been  
8 given. I don't --

9 MR. OTTEN: That was the whole point.

10 MR. DENNEE: Again, I don't know -- okay.  
11 That's not the whole point, the whole point of  
12 the Mayor's Agent hearing.

13 MR. OTTEN: Yes, it is.

14 MR. DENNEE: No, it's not.

15 MAYOR'S AGENT BYRNE: One at a time,  
16 please. One at a time.

17 MR. DENNEE: Again, I do not know if Mr.  
18 Callcott had intended to say anything or not.  
19 Sometimes, we will sit in on the hearings just to  
20 make sure things are going okay and decide at the  
21 time if we need to say anything.

22 I have nothing to say other than the

1 staff today stands on the record.

2 MR. OTTEN: This has really been unfair.  
3 If we had prepared today and also last week, but  
4 after some more of the questions that came out  
5 two weeks ago, we have been prepared to ask the  
6 HPO staff, whose name is on this report, central  
7 to this whole -- triggering this whole process  
8 about how they came to the conclusions by which  
9 you're now being presented.

10 The fact that that gentleman is not here  
11 to answer any of the parties' questions or your  
12 questions, to get clarity on his report, how he  
13 came to it, and subsequent application that  
14 triggered this hearing is prejudicial to us, to  
15 parties in this matter, all parties.

16 MR. DENNEE: And if I may, one more  
17 thing, Mr. Byrne. The Mayor's Agent is not  
18 reviewing the staff reports, per se. The Mayor's  
19 Agent is reviewing an HPRB decision.

20 MAYOR'S AGENT BYRNE: All right. I  
21 appreciate that.

22 MR. DENNEE: If you want to subpoena all

1 the HPRB members and depose them, I suppose --

2 (Laughter.)

3 MR. OTTEN: Mr. Dennee, doesn't the HPRB  
4 decision approve --

5 MR. DENNEE: Are we questioning the --  
6 (Cross-talk.)

7 MR. OTTEN: Doesn't the HPRB's decision  
8 prove --

9 MAYOR'S AGENT BYRNE: Yes. So, Mr.  
10 Otten, you can make an argument. But he's not on  
11 the stand.

12 MR. OTTEN: Okay. Well, the point is  
13 that the HPRB, the board, approved Mr. Callcott's  
14 report.

15 MAYOR'S AGENT BYRNE: Right.

16 MR. OTTEN: That's was their role.

17 MAYOR'S AGENT BYRNE: That was the  
18 official act.

19 MR. OTTEN: That was the official --

20 MAYOR'S AGENT BYRNE: That was the  
21 official act that triggered the ability or the  
22 need for the Applicant to pursue this hearing.

1 MR. OTTEN: Correct.

2 MAYOR'S AGENT BYRNE: But I don't  
3 understand what kind of questions you might ask  
4 him that I would permit, in the sense that I  
5 don't think it is available to you to ask him  
6 about the process by which the HPO reached the  
7 recommendation that they did in the case.

8 I mean, you can ask him to clarify it, I  
9 suppose.

10 MR. OTTEN: Yeah. There's critical  
11 things to clarify in this case. Because his  
12 report, adopted by HPRB, specifically links  
13 critical facts to why this is okay, subdividing  
14 is okay, to another case that he was part of or  
15 that he knew of, the Tregaron estate case, that I  
16 wanted to pursue with him two weeks ago, and then  
17 today.

18 We had significant questions around that  
19 that would help you make your decision and help  
20 us understand our position on this better, before  
21 we make a closing statement, for sure.

22 And we had several other questions about



1 the subdivision itself and how that affects --  
2 how that's related to the Secretary of the  
3 Interior's standards.

4 But the main thing here is how this  
5 subdivision is based on another subdivision, and  
6 how the reality of that other case has created a  
7 report by him, Mr. Callcott, that substantiates  
8 why you should approve this today.

9 MAYOR'S AGENT BYRNE: Well, I think on  
10 the matter of the relevance of a prior case, it's  
11 available to you to argue that that other case is  
12 not germane or not supportive of the position  
13 that Callcott took in the report.

14 MR. OTTEN: This is very unfair. I'm  
15 telling you, he's central to this.

16 MAYOR'S AGENT BYRNE: Well, he's central  
17 to what you planned to present. But what you  
18 planned to present was --

19 MR. OTTEN: Why didn't Mr. Dennee or Mr.  
20 Callcott inform us that he wouldn't be here  
21 today?

22 MAYOR'S AGENT BYRNE: I regret that

1   that's the case, and I wish it had happened  
2   differently.

3               MR. OTTEN:   And the fact --

4               MAYOR'S AGENT BYRNE:   But the question is  
5   whether we have to postpone the entire hearing,  
6   at great inconvenience to a number of people, in  
7   order to allow you to pursue questions which I  
8   might not allow you to ask in any event.

9               MR. DENNEE:   If I may, the time to  
10   challenge the staff report, the staff on its  
11   opinions, was at the HPRB hearing when the staff  
12   is actually presenting.

13              MAYOR'S AGENT BYRNE:   Right.

14              MR. DENNEE:   Again, I have no indication  
15   that we were necessarily going to testify. I  
16   don't know how someone cross examines someone on  
17   some testimony that's never been given and  
18   perhaps never will be given.

19              MR. OTTEN:   This report is on the record.

20              MAYOR'S AGENT BYRNE:   It is on the  
21   record, but this isn't --

22              MR. OTTEN:   This is his testimony.

1           MAYOR'S AGENT BYRNE: But it's not his  
2 testimony. It's part of the record of the HPRB  
3 hearing.

4           MR. OTTEN: Correct.

5           MAYOR'S AGENT BYRNE: Which you're  
6 entitled to disagree with and argue against.

7           MR. OTTEN: I'm not talking about that.

8           MAYOR'S AGENT BYRNE: But I'm talking  
9 about that. I'm telling you --

10          MR. OTTEN: I'm talking about arguing  
11 against it. I'm talking about asking questions  
12 on how he got to this report by which you're  
13 going to base your decision.

14          MAYOR'S AGENT BYRNE: I'm not basing my  
15 decision on that. I'm basing the decision on the  
16 evidence that's presented at the hearing and on  
17 the administrative record regarding the matter.  
18 And I have to say that I don't see that you are  
19 entitled to cross examine the staff on the basis  
20 of the report that they submitted to the HPRB. I  
21 just don't think that's appropriate; I don't  
22 think that's a correct reading of any sense of

1 administrative law.

2 MR. OTTEN: Well, let me ask you this.  
3 Mr. Callcott was here. He was here to present  
4 two weeks ago.

5 MAYOR'S AGENT BYRNE: I don't know if he  
6 was here to present.

7 MR. OTTEN: What was he doing here?

8 MAYOR'S AGENT BYRNE: He was here in  
9 support of the hearing two weeks ago.

10 MR. OTTEN: Well, I'm telling you, this  
11 central figure to this -- triggering this whole  
12 process by which we spent hours of time, hours to  
13 prepare cross-examination questions and reading  
14 through his reports, has prejudiced us.

15 In the alternative of postponement, we  
16 would like to be able to submit, in writing, our  
17 closing arguments based on the other materials  
18 and things that might arrive today, including the  
19 transcripts that have not been delivered to us,  
20 including an application that's not in full on  
21 the record, yet has triggered this hearing.

22 There's really some problems with this.

1           MAYOR'S AGENT BYRNE: I don't have a  
2 problem with giving you an opportunity to submit  
3 written arguments.

4           MR. OTTEN: I'm not talking about  
5 findings of fact and conclusions of law.

6           MAYOR'S AGENT BYRNE: I understand. I  
7 understand. We'll talk about exactly the scope  
8 of how we're going to do that at the end of the  
9 hearing.

10           But in general, I think that this is a  
11 matter -- this particular matter is one in which  
12 the Mayor's Agent doesn't feel a strong need for  
13 proposed findings of fact and conclusions of law.  
14 But I do think that there ought to be an  
15 opportunity for people, if they wish, to subject  
16 brief written arguments as to how the law should  
17 be applied. So I am willing to do that.

18           MS. FERSTER: The Friends of the McMillan  
19 Park would like to return to the issue of the  
20 attachments.

21           MAYOR'S AGENT BYRNE: Yes.

22           MS. FERSTER: Because we do think that we

1 are entitled to those attachments. And we have  
2 repeatedly requested them and not be provided  
3 them. And we would like to know when we will be  
4 provided with those attachments.

5 MAYOR'S AGENT BYRNE: Okay.

6 MR. DENNEE: Would this morning's break,  
7 about five minutes from now, be okay? I mean, I  
8 assume there will still be an objection that it  
9 wasn't provided earlier. But I was unaware of  
10 it, and no one -- none of the parties made me  
11 aware of it, for instance.

12 MR. OTTEN: WE brought it up to you, Mr.  
13 Dennee.

14 (Cross-talk.)

15 MR. DENNEE: I haven't -- Ms. Brown has  
16 just handed it to me, so I will go get it copied.

17 MAYOR'S AGENT BYRNE: Thank you.

18 MR. DENNEE: Although I can't certify  
19 that this is it --

20 MAYOR'S AGENT BYRNE: Well, we can pass  
21 it around, and people can look at it and sort of  
22 see what they think. So let's take a five-minute

1 recess.

2 (Whereupon, at 9:55 a.m., a recess was  
3 taken, to resume at 10:02.)

4 MAYOR'S AGENT BYRNE: Do you think we can  
5 proceed?

6 MS. FERSTER: Are we up to the Friends of  
7 McMillan Park case?

8 MAYOR'S AGENT BYRNE: I think that's what  
9 we're up to at this point because we don't have  
10 HPO. We got the lady from the ANC submitted her  
11 statement last time. So I think we're up to the  
12 opponent.

13 And is there anyone here who is not part  
14 of the Applicants, who are here to support the  
15 Applicant's petition?

16 (No audible response.)

17 MAYOR'S AGENT BYRNE: Okay. So then, we  
18 are ready for the opponents then to begin.

19 MS. FERSTER: The witness sits here?

20 MAYOR'S AGENT BYRNE: Yes. All right.  
21 So, how many witnesses do you have?

22 MS. FERSTER: We have three witnesses.

1           MAYOR'S AGENT BYRNE: Three witnesses.

2 All right, folks. Happy to hear from you.

3 You've all signed the witness sheet who are going  
4 to speak? Okay. And the testimony here is  
5 sworn. So, I would ask you, please, to raise  
6 your hand and tell me, Do you promise to tell the  
7 whole truth to the best of your ability?

8           (Chorus of "I do.")

9           MAYOR'S AGENT BYRNE: Thank you. Okay.

10          You may proceed.

11          MS. FERSTER: And, in lieu of an opening  
12 statement, I'd like to make a brief closing  
13 statement.

14          MAYOR'S AGENT BYRNE: Fine.

15          MS. FERSTER: Our first witness is Anne  
16 Sellin. And she is an expert in historic  
17 preservation. And I have her resume here,  
18 although she has been qualified as an expert  
19 before the Mayor's Agent in the prior hearing.  
20 So, let me just pull her resume out.

21          (Pause.)

22          MS. BROWN: I can short-circuit. I have



1 no objection, if that helps.

2 MAYOR'S AGENT BYRNE: Okay.

3 MS. FERSTER: I'll just submit it for the  
4 record.

5 MAYOR'S AGENT BYRNE: Yeah. Let's have  
6 it in the record. Okay.

7 (Ms. Sellin's resume was submitted into  
8 the record.)

9 MAYOR'S AGENT BYRNE: Ms. Sellin,  
10 welcome.

11 MS. SELLIN: Thanks. You might need  
12 these pictures.

13 MAYOR'S AGENT BYRNE: Okay.

14 MS. SELLIN: It's my testimony, but I  
15 will refer to those.

16 MAYOR'S AGENT BYRNE: Okay. Do you have  
17 a slide show?

18 MS. SELLIN: No. No, no, no.

19 MAYOR'S AGENT BYRNE: There's just this.  
20 Okay. Fine. Very good.

21 MS. BROWN: Is there an extra copy for  
22 the Applicant?

1 MS. SELLIN: Yes, yes. Sure.

2 (Documents were distributed.)

3

4 Whereupon,

5 ANNE SELLIN

6 was called as an expert witness and testified as  
7 follows:

8 DIRECT TESTIMONY

9 MS. SELLIN: The Applicants have  
10 presented a document purporting to represent a  
11 subdivision, Dobbins, a paper subdivision form  
12 that was done in 1887, land that the family never  
13 owned. The Baist atlases, which show plotted  
14 subdivisions, do not show this subdivision. The  
15 property was never developed before 1902,  
16 remaining part of the federal Old Soldier's Home.

17 It was transferred to the Army Corps of  
18 Engineers, and it was developed for water  
19 filtration as a park on the east side of  
20 McMillan.

21 The Dobbins papers' speculative  
22 subdivision was never approved by the Historic

1 Preservation Review Board. Given those lines on  
2 paper, any weight would be foolish to be given to  
3 this. It would be as foolish as taking into  
4 legal consideration the actual property lines of  
5 the 13 original farms that made up our city  
6 before L'Enfant designed his plan for Washington.

7 This hearing's focus now is on the  
8 proposed subdivision of McMillan Park Reservoir  
9 to be broken into six parcels. McMillan occupies  
10 a plinth which surmounts vaults and encompasses  
11 almost 25 acres.

12 It is laid out in three parts,  
13 symmetrically, with the northern section somewhat  
14 reduced by the diagonal Michigan Avenue on the  
15 north. Its central section, the widest, is a  
16 large, open field and is flanked by two courts,  
17 which each house 10 sand towers, two regular  
18 houses, and the washing hoppers.

19 Beyond the court to the north and south  
20 of the site lie wide, open fields. Under these  
21 fields are groin vaults with sintered oculi. Two  
22 feet of turf above the vaults provide the dirt of

1 the fields.

2 Comprehensive Plan policy MC-2-655  
3 states, "McMillan requires that any development  
4 on this side should maintain view sheds and  
5 vistas in a way that minimizes impacts on  
6 historic resources and adjacent development."

7 Comprehensive Plan HP-232, quote, "is to  
8 protect and enhance the views and vistas, both  
9 natural and designed, which form an integral part  
10 of Washington's historic image, preserve the  
11 historic skyline formed by the region's natural  
12 features and topography and significant buildings  
13 and monuments from intrusions."

14 Ms. Eig considers the views from McMillan  
15 itself to be more important than those from  
16 outside, and I agree with her. But both view  
17 sheds from inside and outside are important. The  
18 policy HP-232 protects significant buildings and  
19 monuments from intrusions, and the sand towers  
20 are certainly significant buildings.

21 The unusually rich array of views and  
22 view sheds McMillan provides both inside the site

1 and outside are required to be protected. In  
2 fact, virtually all views would be destroyed by  
3 the overpowering buildings proposed in this  
4 project. I list them below.

5           The first is the panoramic view of the  
6 rows of sand towers that would be obliterated  
7 from the thousands of people who pass the site on  
8 Michigan Avenue every day. Those people on North  
9 Capitol, on 1st Street, as well as those that  
10 would be on the edge of the grounds or on the  
11 north part of McMillan walk would also not be  
12 able to see these.

13           The 115-foot-high medical towers on the  
14 northwest, the 77-feet-high tower of the grocery  
15 store-senior citizens housing on the center court  
16 would block these view sheds. That is Exhibit 1.

17           Exhibit 2, this view of the Washington  
18 Monument from the north field of McMillan would  
19 be destroyed by the medical buildings, the row  
20 houses, and the two mixed-use buildings that  
21 would flank the north court.

22           Exhibit 3, this view of the tower of the

1 Old Post Office from north field of McMillan  
2 would be destroyed by buildings that would be  
3 built on the north side.

4 Exhibit 4, this view of the Capitol Dome  
5 from the north field would be destroyed by the  
6 buildings that would be built on the north court.

7 Exhibit 5, this view of the towers of  
8 National Cathedral from the north field would be  
9 destroyed by buildings that would occupy the  
10 north court.

11 Exhibit 6, the view looking east of the  
12 dome and bell tower of the National Shrine of the  
13 Immaculate Conception would be destroyed by  
14 buildings that would occupy the center field.

15 Exhibit 7. This view of the dome of  
16 Trinity University from the middle field of  
17 McMillan would be destroyed by buildings that  
18 would occupy the middle field.

19 The view of the Capitol Dome from the  
20 south windows of the Lincoln Cottage on the Armed  
21 Services Retirement Home would be obliterated by  
22 the medical buildings; this is not pictured.

1           On the west side, a building looking east  
2 up 1st Street would see miniature towers that  
3 would appear like bollards at the bottom of a  
4 canyon. And that's the last view.

5           So dwarfed would they be by the looming  
6 medical buildings at 115 feet -- and by the way,  
7 they would have at least a 10- to 20-foot  
8 superstructure above that -- in height and the  
9 mixed-use buildings across the court, at 88 feet  
10 -- by the way, that view is from the air. So  
11 that view actually minimizes the appearance of  
12 the height of the buildings.

13           One sand tower is barely visible as it  
14 peeks out at the western edge of the north court  
15 in this rendering from a VMI presentation. I've  
16 indicated the sand tower with an arrow. The  
17 medical building could loom at least 90 feet  
18 higher than the sand towers were.

19           A number of specific directives in the  
20 D.C. Comprehensive Plan and by NCPC have been  
21 written to ensure sensitive treatment of  
22 McMillan, all of which have been ignored.

1           I'll skip over. McMillan's broad open  
2 space, arranged in three parts, with rows of  
3 mysterious towers rising from two matching courts  
4 present a striking and intriguing vision. The  
5 developers know this to be a historic site, but  
6 chose to turn a blind eye to the numerous city  
7 directives in the Comprehensive Plan, as well as  
8 the federal guidelines specific to development of  
9 McMillan.

10           The question before you is whether the  
11 subdivision is consistent with the District of  
12 Columbia Preservation Act, and that act is guided  
13 by the Secretary of Interior's standards of  
14 rehabilitation of a historic site. When federal  
15 ownership of McMillan was conveyed to the D.C.  
16 Government in the 1980s, attached was a covenant  
17 requiring that the Secretary of Interior's  
18 standards for development be followed. I cite  
19 these standards that are relevant, with their  
20 original numbering.

21           One, the property should be used for its  
22 historic purpose or be placed in a new use that



1 requires minimal change to the defining  
2 characteristics of the building --

3 MS. BROWN: Excuse me, Mr. Byrne. I do  
4 have --

5 MAYOR'S AGENT BYRNE: Excuse me one  
6 moment, ma'am.

7 MS. BROWN: I do have an objection to  
8 this testimony because I think that, from your  
9 opening remarks from the last time, you very  
10 carefully set the parameters of what we should  
11 talk about here at this hearing. And I think  
12 that we're going way beyond it with -- I hesitate  
13 to interrupt. But I think it is leading down  
14 that path where the whole testimony is not  
15 necessarily relevant to what the parameters are.

16 So, it's not revisiting the vistas and  
17 the view sheds that were already part of the  
18 master plan approval with the demolition. And  
19 the Secretary of Interior's standards are not  
20 applicable to this proceeding as well.

21 So I state my objection.

22 MS. FERSTER: In response, I would say

1 that the Applicants have argued that the  
2 subdivision is consistent with the purposes of  
3 the act. The regulations of the Mayor's Agent  
4 provide that the standards -- a number of  
5 standards that are applied in looking at the  
6 question of consistency with the purpose of the  
7 act, one of which is the Secretary of the  
8 Interior's standards.

9 So I think her testimony that the  
10 subdivision would violate any number of standards  
11 by the Secretary of the Interior is entirely  
12 relevant to the argument that you have raised  
13 here today.

14 MS. BROWN: I again object because the  
15 lines on a piece of paper that get recorded in  
16 the Surveyor's Office are not relevant to the  
17 Secretary of Interior's standards.

18 MS. FERSTER: Well, our position is that  
19 the subdivision is not -- that the issue before  
20 the Mayor's Agent, our legal position is that the  
21 Mayor's Agent is not evaluating whether lines on  
22 a map, which obviously only affect a piece of

1 paper, and the Mayor's Agent doesn't have  
2 jurisdiction over paper. He's looking at a  
3 historic site.

4 So those lines define what are the  
5 development parameters on this historic site.  
6 And the development parameters, which are part of  
7 this project, you know, which is why the  
8 subdivision, is exactly what is before the  
9 Mayor's Agent.

10 So, if the only issue before the Mayor's  
11 Agent is whether a piece of paper had an impact  
12 on historic properties, then we wouldn't be here  
13 at all.

14 MS. BROWN: And frankly, that is the only  
15 issue before the Mayor's Agent, because the  
16 development parameters have already been set by  
17 the previous Mayor's Agent order.

18 MAYOR'S AGENT BYRNE: So, I do think that  
19 the question, as I understand it, is whether the  
20 subdivision is necessary to construct this  
21 project of special merit.

22 So, under those circumstances, I'm going

1 to allow the testimony to proceed. But we're not  
2 revisiting the question of whether this is a  
3 project of special merit.

4 MS. FERSTER: And I would also add that  
5 Ms. Sellin is skipping over the part in her  
6 written testimony addressing the Comprehensive  
7 Plan. She put this in because the Applicants in  
8 their prehearing submission made a long written  
9 argument regarding the Comprehensive Plan. And  
10 so, you know, we are putting in our written  
11 argument for the Comprehensive Plan; she's not  
12 going to repeat that. We want to make that for  
13 the record.

14 MAYOR'S AGENT BYRNE: Okay. That's fine.  
15 All right. You may proceed.

16 MS. SELLIN: Okay. The first standard  
17 is, "The property shall be used for its historic  
18 purpose or be placed in a new use that requires  
19 minimal change to the defining characteristics of  
20 the building and its site and environment."

21 The historic purpose was a park and a  
22 filtration site. Seventeen acres of a filtration

1 groin vaults, a defining feature of the site,  
2 would be destroyed, as well as about 19 acres of  
3 the open field, which are about to be occupied by  
4 buildings and their settings, which differ  
5 markedly from the park's signature open fields.

6 Most of the site, declared a park in 1909  
7 and made a national park by Taft when he was  
8 president in 1911, would be destroyed.

9 The second standard is, "The historic  
10 character of a property shall be retained and  
11 preserved. The removal of historic materials or  
12 alteration of features and spaces that  
13 characterize the property shall be avoided."

14 The high-rise buildings, from 77 feet to  
15 115 feet on the north side -- well, actually on  
16 both sides, east and west, and the 44-high row  
17 houses in the middle of the court would  
18 completely overwhelm and engulf the court, and  
19 the buildings' footprints would consume the wide,  
20 open spaces. Destroyed completely would be the  
21 integrity of the site's original tripartite  
22 composition.

1           The two rows of sand towers would no  
2 longer be able to be seen as twin towers. The  
3 continuous walk around McMillan would be partly  
4 destroyed, that stretch along Michigan Avenue,  
5 1st Street, and the healing garden.

6           Number 9 in the standards: "New  
7 additional exterior alterations or related new  
8 construction shall not destroy historic materials  
9 that characterize the property. The new works  
10 shall be differentiated from the old and shall be  
11 compatible with the massing, size, scale, and  
12 architectural features to protect the historic  
13 integrity of the property and its environment."

14           The incompatible footprints and scale of  
15 the new buildings would deform this site beyond  
16 all recognition. Its open space and once  
17 perception of its schematic layout would be  
18 totally destroyed. The remnant of open land at  
19 the south end would be overwhelmed by the massing  
20 and towering height of the buildings on the north  
21 side.

22           And finally, standard number 10, "New

1 additions and adjacent or related new  
2 construction shall be undertaken in such a manner  
3 that if removed in the future, the essential form  
4 and integrity of the historic property and its  
5 environment would be unimpaired."

6           McMillan's integrity would be undermined  
7 by the destruction of all but three of its  
8 original groin vault compartments, with no  
9 attempt to save those identified as salvageable  
10 in Mr. Sillman's written study. The alteration  
11 of the site's original elevation for a pad to  
12 accommodate the high-rises, the footprints of the  
13 large new buildings, and the interjection of four  
14 new streets that would cut through McMillan --  
15 Evarts Street, 1/2 Street, 1/4 Street, and 3/4  
16 Street -- would forever preclude the retrieval of  
17 the site's original integrity.

18           The violence inflicted to this site, with  
19 over 80 percent of its historic fabric destroyed,  
20 would likely result in unlisting of McMillan from  
21 the National Register of Historic Places. This  
22 project is entirely inconsistent with the purpose

1 of the act.

2 Mr. Callcott brought up Tregaron at the  
3 preservation hearings in relation to McMillan,  
4 saying that this was comparable. An historic  
5 Tregaron site at Macomb, a PUD of many historic  
6 acres, was resolved in a Mayor's Agent's hearing  
7 presided over by Mr. Quander in 2006.

8 And it yielded fortuitous results. Ten  
9 open acres were preserved in perpetuity, and  
10 recently three more acres have been made open for  
11 public enjoyment. This is all now a public park.  
12 Only part of the site was subdivided, with only  
13 seven house lots created. There were about 120  
14 originally proposed. These are now reduced to  
15 three due to lack of access to now-closed Klinge  
16 Road. The developers donated liberally to create  
17 the Tregaron Conservancy, which maintain the  
18 gardens.

19 The difference is that the Tregaron  
20 developers worked with the community over several  
21 years and contributed sensitively to keeping that  
22 property almost entirely intact.



1           Despite hundreds of public meetings on  
2   McMillan, many of which I attended, the VMFA  
3   Developers consistently turned a deaf ear to  
4   citizens. Never did the City ever open the site  
5   to competitive bidding, designs of which would  
6   very probably have resulted in a far more  
7   salubrious solution.

8           Finally, the affordable housing as  
9   justification for special merit.

10           MAYOR'S AGENT BYRNE: Excuse me a minute.

11           MS. SELLIN: Yes.

12           MAYOR'S AGENT BYRNE: I'm not going to  
13   permit that testimony.

14           MS. FERSTER: Can we make a proffer of  
15   that testimony before you rule on it?

16           MAYOR'S AGENT BYRNE: I've read it.

17           MS. FERSTER: Okay. Because she's not  
18   arguing that these benefits are not special merit  
19   benefits. What she's presenting is her belief  
20   that the balance of special merit benefits  
21   against the loss now of the open space, as a  
22   result, and that contributing character of the

1 site has shifted and that it is different from  
2 what you determined there.

3           So, her testimony is not going to whether  
4 this is a special merit project, but whether that  
5 balance has shifted when you look at it in the  
6 context of her specific testimony, which is  
7 relating to the special relations and the open-  
8 space elements which will be destroyed by the  
9 subdivision.

10           MS. BROWN: And I would object because  
11 it's the development itself that was approved  
12 that would fill up the site, not the subdivision.  
13 Subdivision doesn't allow any construction.

14           MR. OTTEN: But the subdivision allows  
15 this project to move forward.

16           MAYOR'S AGENT BYRNE: Okay. So, as I  
17 understand it, they are basically making an  
18 argument to the effect that the commitment to  
19 inclusionary, or affordable, housing is time  
20 limited, correct?

21           MS. SELLIN: To a year, as stated by Mr.  
22 Thakkar.

1 MS. FERSTER: Her argument is that when  
2 you balance, as you must do -- and the balance,  
3 because of the key, the importance of the spatial  
4 relations and the open space of the site has  
5 shifted.

6 MAYOR'S AGENT BYRNE: Okay. All right.  
7 I'll permit it then. Thank you.

8 MS. SELLIN: Finally, the affordable  
9 housing justification of special merit. An  
10 examination of the testimony of one of the  
11 developers who testified at the PUD hearing  
12 before the Zoning Commission on May 5th, 2014,  
13 bears serious consideration. On page 160, line  
14 2, during his cross examination, Mr. Pozen asked,  
15 "For both multi-family and the town homes, what's  
16 the length of affordability that's required and  
17 what's the mechanism for enforcing affordability  
18 over the time?"

19 Mr. Thakkar, one of the developers: "So,  
20 can I start? So, with the regard to the row  
21 houses?"

22 Mr. Pozen: "Yes, sir."

1           Mr. Thakkar: "The District has an  
2 inclusionary zoning covenant that goes along with  
3 each of these homes. I believe, and I will get  
4 back to you, that the time period is 20 years and  
5 the enforcement is actually through a covenant  
6 that runs with the land, enforced by, I believe,  
7 the Department of Housing and Community  
8 Development, as with all exclusionary zoning  
9 units throughout the city."

10           Mr. Pozen: "Okay."

11           Mr. Thakkar: "So, counsel, before I  
12 forget, the affordability is the life of the  
13 project pursuant to the IC comment that I just  
14 mentioned."

15           Mr. Pozen, page 161: "What is the life  
16 of the project? I'm sorry. Sorry for the  
17 confusion."

18           Ms. Brown: "I don't want to be answering  
19 a question, because I'm not in fact the witness.  
20 But it's in D.C. Chapter 26 of the Inclusionary  
21 Zoning Regulations."

22           Mr. Thakkar: "I'm not sure what you mean

1 by 'beyond,' but it is compliant with, as it  
2 should be."

3 Mr. Pozen: "Okay. Thank you. But is  
4 that -- that's the same for multi-family?"

5 Mr. Lynch, one of the developers: "The  
6 multi-family senior has several covenants that  
7 will have to be meshed together as part of the  
8 land disposition agreement, including the  
9 covenants related to affordable housing  
10 projects."

11 Mr. Pozen: "So that's not yet been  
12 finalized at this point?"

13 Mr. Lynch: "Correct."

14 Exhibit 10. The affordable housing  
15 projects have not yet been finalized. We've  
16 found in the corrected zoning order of the  
17 McMillan PUD case, number 13 and 14, verification  
18 of the developer's intent of the testimony cited  
19 above on page 20 under D, quote, "The Applicant  
20 will be requesting the zoning administrator to  
21 grant an exemption from the inclusionary zoning  
22 requirements of Chapter 26, pursuant to number

1 2602.3F."

2           The provision exempts to any development  
3 financed, subsidized, or funded in whole or in  
4 part by the Federal or District Government and  
5 administered by the Department of Housing and  
6 Community Development, the District of Columbia  
7 Housing Finance Agency, or the District of  
8 Columbia Housing Authority. And that meets the  
9 requirements set forth in number 2602.7.

10           The developers stated their intent to get  
11 a waiver from IZ housing requirements. The  
12 second arrow of the law reads, quote, "The exempt  
13 affordable unit shall be reserved for the  
14 targeted households and sold or rented in  
15 accordance with the pricing structure established  
16 by the federal or District funding source or  
17 financing or subsidizing entities for so long as  
18 the project exists. Exhibit 11.

19           So, the affordable housing units that are  
20 proffered may not be affordable in the end or at  
21 least for only a short period of 20 years, in  
22 explicit contradiction of developer's testimony

1 before the Zoning Commission and before you, the  
2 Mayor's Agent. In fact, we have no idea just how  
3 much of the affordable housing might be excused  
4 by this tactic. And in a private deal with the  
5 City, a waiver would be given with no public  
6 participation.

7           Affordable housing is a decisive element  
8 touted to justify special merit, a finding of  
9 special merit that would permit the destruction  
10 of at least 80 percent of this historic park.  
11 The law stipulates that the affordable units  
12 should be reserved for targeted households for so  
13 long as the project exists. Pages 21 and 22 of  
14 the Zoning Commission order, Exhibit 12.

15           The Applicants have bifurcated this case  
16 with two hearings, one mainly focused on the  
17 destruction of the 17 vaults and the second  
18 hearing on the subdivision, that is, the site  
19 arrangement. The Mayor's Agent must balance his  
20 opinion based on the cumulative effect of these  
21 two presentations weighed against McMillan's  
22 historic importance.

1           The benefits of affordable housing units  
2 of unknown quantity and limited duration simply  
3 cannot be balanced by the destruction of some 80  
4 percent or more of this large and unique  
5 landmark.

6           I'm including in the record an article  
7 from the National Trust magazine, Preservation,  
8 on McMillan. Frederick Law Olmsted, who  
9 landscaped McMillan, wrote in 1917, in the  
10 periodical Landscape Architecture, "A thing which  
11 many people have held to be of great and peculiar  
12 beauty, and which cannot be replaced, even if the  
13 predominant men of the day fail to appreciate its  
14 beauty, or are inclined to think its beauty would  
15 be increased by, quote, 'improvements,' ought not  
16 to be destroyed or radically altered except under  
17 pressure of unavoidable necessity or after the  
18 most deliberate searching and humble inquiry as  
19 to what is the predominant opinion of the day as  
20 really right or is perhaps a passing phase  
21 colored by unconscious prejudices."

22           McMillan is a thing of great and peculiar



1 beauty, which cannot be replaced.

2 MS. FERSTER: I have a couple of follow-  
3 up questions.

4 MAYOR'S AGENT BYRNE: Go ahead.

5 DIRECT EXAMINATION

6 BY MS. FERSTER:

7 Q. Ms. Sellin, are you familiar with the EHT  
8 Traceries report prepared by Vision McMillan  
9 Partners, dated September 15, 2014, which was  
10 submitted in the record --

11 A. Yes. Yes.

12 Q. -- at the prior hearing? And you're  
13 familiar with the Appendix I, which does an  
14 evaluation of the relative level of significance  
15 and integrity for each of the resources?

16 A. Yes. Yes.

17 Q. Types within the site. I'm going to read  
18 you a statement from her -- this is, you know, a  
19 ranking by EHT about which resources are  
20 significant. And she ranks them from --

21 MS. BROWN: Point of clarification. Are  
22 we submitting this to the record?

1 MS. FERSTER: Yes, indeed. We are.

2 MS. BROWN: So, the whole report?

3 MS. FERSTER: Absolutely.

4 MAYOR'S AGENT BYRNE: It's in the record.

5 MS. FERSTER: It is not in the record.

6 (Cross-talk.)

7 MAYOR'S AGENT BYRNE: It is not in the  
8 record?

9 MS. FERSTER: It is not in the record.

10 MAYOR'S AGENT BYRNE: Right. That's  
11 right.

12 MS. BROWN: Do you have copies for the  
13 Applicant?

14 MS. FERSTER: I have my own one copy. I  
15 would be happy to submit my copy for the Mayor's  
16 Agent. And we would ask that you refer to your  
17 own copy unless you would like us to make you a  
18 copy later on.

19 MS. BROWN: Yeah. If you're citing it  
20 now, we should be provided a copy to follow  
21 along.

22 MS. FERSTER: Well, it's your expert's

1 report. But if you want us to --

2 MS. BROWN: No. You're submitting it to  
3 this record, so you should have a copy for all  
4 parties to this hearing.

5 MS. FERSTER: First of all, my request  
6 would be that the Mayor's Agent just simply  
7 include it in the record from the prior hearing,  
8 and I will give you my copy.

9 MAYOR'S AGENT BYRNE: I have a copy.

10 MS. FERSTER: Okay. Then I will make a  
11 copy for you if the Mayor's Agent insists. But  
12 it's their report.

13 MAYOR'S AGENT BYRNE: No. I --

14 MS. BROWN: I would like a copy to see as  
15 she's -- you know, that I could look at now to  
16 make sure that what you're reciting and quoting  
17 is accurate.

18 MS. FERSTER: Okay. Well, I will give  
19 you my copy as soon as I quote it to the Witness.

20 So, let me finish this.

21 BY MS. FERSTER:

22 Q. Okay. So, you're familiar with the fact

1 that this report ranks the resources from minor  
2 to -- you know, in terms of level of significance  
3 --

4 A. Yes.

5 Q. -- from noncontributing minor,  
6 supporting, key?

7 A. Yes.

8 Q. Okay. So, I'm turning to page 221 of the  
9 report, which is, you know, part of her ranking,  
10 the EHT's ranking of significance. I'm going to  
11 read you a segment of that and ask whether you  
12 agree with it or not.

13 This report says that "the spatial  
14 organization of built resources and open spaces,  
15 including the linear arrangements of built  
16 resources within the service courts that rise  
17 above the horizontal plane of the open space, are  
18 key in terms of their significance, relative of  
19 significance." Do you agree with that statement?

20 A. Yes. They are key, yes.

21 Q. Okay. And she also -- the EHT report  
22 indicates that the integrity is high. Do you

1 agree with that statement?

2 A. Yes.

3 Q. And the report also indicates that the  
4 below-ground vaults are merely supporting in  
5 terms of their relative level of significance.  
6 Do you agree with that?

7 A. Yes.

8 Q. You agree that they're supporting?

9 A. Yes.

10 Q. Not key?

11 (No audible response.)

12 MS. FERSTER: Okay. Yours.

13 MAYOR'S AGENT BYRNE: You can take your  
14 time to look at that.

15 MS. FERSTER: And we do ask that that  
16 report be included in the record.

17 MAYOR'S AGENT BYRNE: Yeah.

18 MS. FERSTER: Without our having to copy.

19 MAYOR'S AGENT BYRNE: We'll include it in  
20 the record.

21 Mr. Otten?

22 MS. FERSTER: One last question.

1           MAYOR'S AGENT BYRNE: Wait a second. Did  
2 you want to raise something about the exhibit?

3           MR. OTTEN: I don't. I have a question  
4 to ask.

5           MAYOR'S AGENT BYRNE: All right. Okay.

6           MS. FERSTER: I'll just let you review  
7 that for a minute.

8           (The Witness perused the document.)

9           BY MS. FERSTER:

10          Q. Okay. So, and in your written testimony  
11 -- in your testimony that you just gave, you  
12 testified that you believe that the balance, the  
13 cumulative impact of the loss of both the vaults  
14 and the spatial organizations and open spaces did  
15 not outweigh the loss of -- outweigh the special  
16 merit benefits, correct?

17          A. Yes.

18          Q. Okay. Do you also -- what is your  
19 opinion on the -- if you look just at the loss of  
20 the spatial relations in the open-space element  
21 that you agree is key to the site's historic  
22 significance, and you balance that against the

1 special merit benefits, do you believe those  
2 special merit benefits outweigh the loss to those  
3 spatial relations?

4 A. No. I don't. Definitely not.

5 Q. Okay. Okay.

6 MS. FERSTER: Did you have any questions?

7 MS. MERRITT: I don't have any questions.

8 MAYOR'S AGENT BYRNE: All right, Mr.

9 Otten, I guess goes next.

10 Mr. Otten, do you have any questions?

11 MR. OTTEN: Yes.

12 DIRECT EXAMINATION

13 BY MR. OTTEN:

14 Q. Hi, Ms. Sellin.

15 A. Hello.

16 Q. I'm glad you're here to be an expert  
17 today for us. I only have a couple of questions,  
18 four questions.

19 Would you agree that how a lot is  
20 subdivided is a defining -- helps define the  
21 characteristic of the site, in particular, an  
22 historic site?

1           A.    Yes.

2           Q.    And would you say the subdivision of the  
3   McMillan historic site is an alteration of the  
4   spaces that characterize this property?

5           A.    Yes.

6           Q.    And would you say that the Applicant,  
7   Vision McMillan Partners, is avoiding the  
8   alteration of the character-defining aspects of  
9   this site?  Are they avoiding the alteration of  
10  the character-defining aspects?

11          A.    Are they avoiding it?  You mean by their  
12  plans?  You mean by what has been presented?

13          Q.    Subdivision --

14          A.    Yes.

15          Q.    I guess I should ask this.  Is the  
16  Applicant attempting to avoid the alteration of  
17  the character-defining aspects of the site?

18          A.    Oh.  The aspects of the site are  
19  destroyed by the subdivision.

20          Q.    Right on.  And you mentioned in your  
21  testimony the Tregaron estate.

22          A.    Yes.



1 Q. And you are aware that Steve Callcott  
2 couldn't make it today. Wrote his report -- in  
3 his report, he mentions the Tregaron estate,  
4 correct?

5 A. Yes. Well, I --

6 MS. BROWN: Point of clarification. What  
7 report are we talking about?

8 MR. OTTEN: I'm sorry.

9 MS. SELLIN: I was at the preservation  
10 hearing --

11 Q. Yes.

12 A. And I did not -- I heard him address it  
13 verbally.

14 Q. Okay. Okay. So, this -- right on.

15 Have you seen the January 22nd, 2015,  
16 Steve Callcott report that was adopted by the  
17 HPRB earlier this year? Have you seen that  
18 report, by chance?

19 A. Yes.

20 Q. He mentions Tregaron as --

21 A. Yes.

22 Q. Okay. And thinking back to Tregaron,

1 would you say that the land use planning in that  
2 case minimized the impacts of the development on  
3 the landscape?

4 A. The end result of that PUD did result in  
5 completely minimizing the vast housing that had  
6 originally been proposed for the site. And  
7 actually, it's a beautiful open park that anybody  
8 can walk on. It's superbly maintained, most of  
9 it. And they have a conservancy to continue  
10 supervising the growth and keeping deer out of  
11 the property and marking the walking paths.

12 Q. And so, you would say it's a limited  
13 development there in terms of --

14 A. Extremely limited, drastically limited.

15 Q. And in comparison, this plan by VMP  
16 presented now as a subdivision, how does that --  
17 is it limited on the site?

18 A. No. It mostly destroys the site. The  
19 whole perception of the site as it was designed  
20 and the park use of the site, of the whole site.

21 Q. Thank you. Thank you.

22 A. It's just a remnant park proposed, much

1 of which will be engulfed, I think, at least an  
2 acre, by the water department.

3 Q. The D.C. Water facility?

4 A. Um-hm.

5 Q. Thank you.

6 MAYOR'S AGENT BYRNE: Okay. Ms. Brown.

7 MS. BROWN: Yes.

8 CROSS EXAMINATION

9 BY MS. BROWN:

10 Q. Good morning, Ms. Sellin. A couple of  
11 questions. Who maintains legal authority over  
12 plats in the District of Columbia?

13 MS. FERSTER: She's not a legal expert.  
14 I object to that testimony.

15 MS. SELLIN: I don't know.

16 MS. BROWN: I don't know.

17 MS. FERSTER: If I object, you don't  
18 answer until he has ruled on the objection, which  
19 it's not a legal experts issue.

20 MAYOR'S AGENT BYRNE: Well, she testified  
21 about the legal effect of the subdivision plan  
22 that was presented. So.

1 MS. FERSTER: She testified from a  
2 historic preservation perspective --

3 MAYOR'S AGENT BYRNE: No, I think it was  
4 a little more than that.

5 (Cross-talk.)

6 MAYOR'S AGENT BYRNE: I think she did  
7 more than that.

8 MS. BROWN: She talked about the Baist  
9 maps and that the subdivision doesn't show up on  
10 the -- the Dobbins subdivision doesn't show up on  
11 the Baist maps.

12 MS. SELLIN: I do have the Baist maps of  
13 the property if you want to see them.

14 MS. FERSTER: Because as a historic  
15 preservation expert, she reviews maps, but she  
16 doesn't look at legal issues.

17 MS. BROWN: Okay. Well, I have a follow-  
18 up question.

19 Q. Do you --

20 A. I can submit them.

21 Q. Do you consider the District of Columbia  
22 Surveyor's Office maps to have any relevance to

1 historic research?

2 A. To historic for sure, yes. To research,  
3 certainly.

4 Q. And have you looked at the Surveyor's  
5 Office records for this property?

6 A. I've looked at the Dobbins map that you  
7 presented. I have not gone to the Surveyor's  
8 Office.

9 Q. Did you review it in the Tracerics  
10 report?

11 A. No. I reviewed what you --

12 MS. FERSTER: Excuse me. What Tracerics  
13 report are you referring to? Is the Dobbins map  
14 in the Tracerics report? Is that what you're  
15 saying?

16 MS. BROWN: Are you asking me questions?

17 MS. FERSTER: Because as far as I know,  
18 it's not in here.

19 MS. BROWN: Well, I'm the one asking the  
20 questions. And I'm not sure there's an objection  
21 on the table.

22 (Cross-talk.)

1 MS. SELLIN: I looked at the Dobbins map  
2 that was submitted.

3 BY MS. BROWN:

4 Q. And did you notice that there is a  
5 Surveyor's Office stamp in the corner officially  
6 recording it?

7 A. Yes. And I understand your argument  
8 about the zoning regulations.

9 MAYOR'S AGENT BYRNE: I don't understand  
10 the argument about the zoning regulations.

11 (Laughter.)

12 MAYOR'S AGENT BYRNE: Just answer the  
13 question, okay?

14 MS. SELLIN: Yeah, okay.

15 BY MS. BROWN:

16 Q. So, that subdivision shows 122 lots on  
17 it, correct?

18 A. Yes.

19 Q. How does that affect the open space on  
20 McMillan Reservoir?

21 A. Well, it doesn't because it was never --  
22 there was never a historic preservation hearing

1 that permitted that subdivision, which would have  
2 to happen, by law.

3 Q. It is the current subdivision on the  
4 property; is that correct?

5 A. No. No, it is not. No. If you look at  
6 the submission that Steve Raich, who was the head  
7 of the preservation office, what we presented is  
8 not the Dobbins map at all.

9 Q. So, you're not aware of whether or not  
10 the Dobbins map, whether or not that's the last  
11 official record in the Office of the Surveyor for  
12 what is the recorded lots on that property? Are  
13 you aware or not aware?

14 A. No.

15 Q. You're not aware?

16 A. No.

17 Q. Okay. If those 122 lots exist today,  
18 they don't affect the open space, do they?

19 A. No.

20 Q. So, when this subdivision goes forward,  
21 there will be seven new record lots -- six new  
22 record lots, plus the theoretical lots. And once

1 that subdivision is recorded, like the Dobbins  
2 subdivision, it will have no effect on the  
3 property, will it, on the open space?

4 A. Of course it will. It will permit this  
5 development. It's been used as a filtration bed  
6 and a park for well over 100 years. Although it  
7 has been stopped, it has not been disturbed at  
8 all. And the Dobbins map is a theoretical map,  
9 which you yourself say.

10 Q. No, I didn't.

11 MAYOR'S AGENT BYRNE: Okay. So what --

12 MS. BROWN: Let me move on with my next  
13 questions.

14 BY MS. BROWN:

15 Q. You quoted extensively from a transcript  
16 in your testimony, and you only supplied one page  
17 of it in your attachment.

18 A. No. Actually -- no, but I supplied more  
19 in my testimony.

20 Q. Correct. And that's hand-typed, so it's  
21 not the official transcript.

22 A. Yes. It's from the official transcript.



1 Q. It's not the official transcript.

2 A. Oh, you mean what I submitted? Well, I  
3 submitted -- okay. Well, I can --

4 Q. I'm asking if that's correct that what  
5 you typed up in your written testimony --

6 A. And I will supplement with the --

7 Q. I haven't asked you to supplement. I'm  
8 only asking for clarification.

9 So, you've only submitted one page of the  
10 official transcript, and the rest was just typed  
11 from the transcript?

12 A. Yes.

13 Q. So --

14 A. Exactly.

15 Q. So the accuracy of it is not necessarily  
16 correct, and we cannot verify the accuracy unless  
17 we have the official transcript?

18 A. You can verify it. It is correct.

19 Q. You're not an expert on inclusionary  
20 zoning, are you?

21 A. No.

22 Q. And you don't understand the exemption

1 process, do you?

2 A. Well, I understand that an exemption is  
3 being asked for.

4 Q. And do you know what that means?

5 A. Yes, I think so. It says --

6 Q. Under the zoning regulations? You're  
7 familiar with the zoning regulations exemptions  
8 for inclusionary zoning and why they're granted?

9 A. Yes. I do not know the process of that.  
10 I gather from the transcript that it's a private  
11 agreement between the developer and the city.

12 Q. I didn't ask for your speculation. I  
13 just asked whether you know. And you don't; is  
14 that correct?

15 A. No.

16 Q. Okay. So you don't know --

17 A. I know from what I've read in the  
18 transcript.

19 Q. Um-hm. And did you read the order, the  
20 Zoning Commission order that you refer to?

21 A. Yes, I did.

22 Q. And do you feel that there's any

1 discrepancy between what the transcript is saying  
2 and what's required by the Zoning Commission?

3 A. Well, yes. The Zoning Commission  
4 apparently accepted the fact that there would be  
5 some dealing between the developers and the City  
6 on --

7 Q. To require affordable housing?

8 A. On the amount of affordable housing, yes,  
9 and duration, apparently. Um-hm.

10 Q. That's correct. And then the project  
11 presented that was approved by the Mayor's Agent  
12 in the previous Mayor's Agent order in HPA 14-  
13 393, that set parameters on the affordable  
14 housing requirement as well, didn't it?

15 A. I relied on what was given at the Zoning  
16 Commission hearing in the testimony.

17 Q. So you don't rely on the testimony before  
18 this Mayor's Agent on the affordable housing  
19 component?

20 A. Well, yes.

21 Q. Are you aware that the Mayor's Agent  
22 already ruled on the view sheds issue in the

1 previous Mayor's Agent order?

2 A. Yes. But I don't agree with it.

3 Q. And how did he rule? So are you trying  
4 to revisit those issues that have already been  
5 ruled upon?

6 A. Yes.

7 MS. FERSTER: I think she already  
8 testified that her testimony goes to the balance  
9 --

10 MS. SELLIN: I have.

11 MS. FERSTER: -- not to the --

12 MS. BROWN: She needs to answer the  
13 questions, not you.

14 MS. FERSTER: We had proffered that she's  
15 not challenging the special merit determination.  
16 She's simply challenging the balance and the  
17 context in this proceeding.

18 MAYOR'S AGENT BYRNE: I think it's a fair  
19 question under the circumstances.

20 If you can answer the question.

21 BY MS. BROWN: Right. Okay.

22 BY MS. BROWN:

1       Q.   So the question before you is, hasn't the  
2 Mayor's Agent already ruled on the special merit  
3 of the project?

4       A.   Yes.

5       Q.   And hasn't he determined that the view  
6 sheds will not be affected and are not germane?

7       A.   Yes.   But my argument -- but my argument  
8 here is that he hadn't heard the whole case,  
9 actually.   And it seemed to be a premature  
10 judgment.   The balance of the subdivision of the  
11 whole site and exactly what the results would be  
12 versus the amount of housing that would be  
13 produced, the affordable housing that would be  
14 produced, he has to balance one against the  
15 other.   And he had not heard this part at the  
16 hearing.   That's why --

17       Q.   Okay.   So, it is your position --

18       A.   -- I've revisited the subdivision in  
19 relation to the views that would be destroyed.

20       Q.   Is it your position that subdivision is  
21 more harmful than the demolition?

22       A.   They're both extremely harmful.   They

1 both destroy the whole integrity of the site.

2 Q. So, if the subdivision were to go through  
3 and the Applicant did not build the project and  
4 they recorded the subdivision, what impact would  
5 it have on the open views across the property?

6 A. Well, if it were not built on, there  
7 would be none. But what disturbs me --

8 Q. So, the subdivision alone does not create  
9 any harmful effects.

10 MS. FERSTER: That was not her testimony.  
11 She said --

12 MS. BROWN: No. I'm asking her --

13 MS. SELLIN: My testimony was balancing  
14 the whole procedure --

15 MS. BROWN: I had a different question.  
16 I heard that answer, and I'm moving on to a new  
17 question.

18 BY MS. BROWN:

19 Q. I'm asking the question that, if the  
20 subdivision gets recorded but the construction  
21 does not go forward, what effect does that have  
22 on the open space and views across the --

1           MR. OTTEN: Objection. This is  
2 hypothetical. This is a hypothetical question.

3           MAYOR'S AGENT BYRNE: She can ask the  
4 question. It goes to her argument about the  
5 nature of the subdivision. So it's important to  
6 her case.

7           MS. SELLIN: Well, it depends on what the  
8 subdivision would mean. If it would go to  
9 different owners at the time, yes. It could have  
10 a substantial effect on the site.

11           MS. BROWN: How does the ownership affect  
12 --

13           MS. SELLIN: It would be divided. It  
14 would be -- now it's a site, one site. It would  
15 be broken up.

16           (Cross-talk.)

17           BY MS. BROWN:

18           Q. But there are 122 --

19           A. It would have a deleterious effect.

20           Q. So, the 122 lots on it now have no effect  
21 on the open space, you testified, correct?

22           A. Well, that subdivision was never

1 approved.

2 Q. That's not my question. I asked you to  
3 clarify --

4 A. Those are theoretical lots. So it's a  
5 theoretical question.

6 Q. You claim that they are theoretical lots?

7 A. Yes.

8 Q. Do you understand what a theoretical lot  
9 is?

10 A. Yes.

11 Q. So you're saying that those were created  
12 under section 25 --

13 A. This is a lot that was never even owned  
14 by the Dobbins family.

15 Q. I'm asking the questions here, and you're  
16 not answering them.

17 You're saying that the 122 lots were  
18 subdivided under Section 2517 of the zoning  
19 regulations.

20 A. In 1887, and the land has never been used  
21 for housing lots since or even considered until  
22 now. So I don't think it's really relevant. It



1 was zoned by the national --

2 (Cross-talk.)

3 BY MS. BROWN:

4 Q. That's not my question.

5 A. -- by the Corps of Engineers and then by  
6 the District.

7 Q. You're answering a different question.

8 MR. OTTEN: Please let her finish her  
9 answer.

10 BY MS. BROWN:

11 Q. You're not answering my question. I have  
12 a specific question that I asked you.

13 A. No, I did answer. I said if they --

14 Q. You said that that they were theoretical  
15 lots.

16 A. If they were divided into separate lots  
17 with different property owners, yes. That would  
18 fundamentally change --

19 (Cross-talk.)

20 BY MS. BROWN:

21 Q. We already moved beyond that. You're not  
22 answering my question.

1           My question was, following up your  
2 statement that these were theoretical lots, you  
3 said that they are theoretical lots. And I  
4 followed up with my question to say, did  
5 theoretical lots, are you saying that they were  
6 subdivided under Section 2517 of the zoning  
7 regulations, which is the provision about  
8 theoretical lots?

9           A.    (No audible response.)

10          Q.    Yes or no?

11               MS. FERSTER: I mean, she can't answer  
12 that.

13               MS. SELLIN: It's such a theoretical  
14 question.

15               (Laughter.)

16               (Cross-talk.)

17               MAYOR'S AGENT BYRNE: I'm going to --  
18 you're using theoretical in four different ways  
19 here.

20               MS. SELLIN: I'm just not an expert in --

21               MAYOR'S AGENT BYRNE: I appreciate your  
22 point that -- when she uses the term "theoretical

1 lots," she's not using the language of the zoning  
2 regulations. Because, of course, there were no  
3 zoning regulations in 1887.

4 MS. SELLIN: Not until the '20s.

5 MAYOR'S AGENT BYRNE: But I understand  
6 your point. So, yeah, I think you can proceed to  
7 the next question.

8 MS. BROWN: Okay.

9 (Pause.)

10 MS. BROWN: I think those are all my  
11 questions for now.

12 MAYOR'S AGENT BYRNE: Okay.

13 MS. FERSTER: One on redirect.

14 MAYOR'S AGENT BYRNE: Yep.

15 REDIRECT EXAMINATION

16 BY MS. FERSTER:

17 Q. Okay. Let me just ask you a hypothetical  
18 question. You know, let's just assume that these  
19 lots were recorded in whatever process, 122 lots,  
20 however many they are, were recorded in whatever  
21 process legally existed in 1887, and so in the  
22 Office of Surveyor or whatever the predecessor

1 was in the 1887 District of Columbia Office.

2 A. Um-hm.

3 Q. Is that legally relevant? Is that  
4 relevant today --

5 A. No. No.

6 Q. -- to what the subdivision application  
7 would be for the Mayor's Agent?

8 A. No.

9 Q. And in terms of the historic significance  
10 of the site in 1887, assuming there was, you  
11 know, a legal subdivision in 1887, is the  
12 McMillan site as we know it today, does its  
13 period of significance extend back to 1887?

14 A. Oh --

15 Q. And when it was, presumably, farmland?

16 A. No, no. No. It wasn't farmland. It was  
17 the southern tip of the soldiers home. Michigan  
18 Avenue didn't even exist. Apparently, they were  
19 thinking about it, but it didn't even exist. It  
20 ran right into -- it was part of the old soldiers  
21 home. And that's why it was never sold to  
22 Dobbins. Dobbins did develop on the other side

1 of North Capitol Street several blocks of houses.  
2 They're still there. They were built.

3 But he never owned this property. It was  
4 never sold to him. And it remained part of the  
5 old soldiers home until the Corps of Engineers  
6 put in the McMillan Reservoir Park.

7 Q. And so, just generally, there are many  
8 historic sites in the District of Columbia that  
9 have a period of significance -- built sites, for  
10 example.

11 A. Yeah.

12 Q. Say the period of significance was, you  
13 know, 1920. And say there was a construction or  
14 subdivision or action on the site before the  
15 period of significance. Does that in any -- the  
16 fact that there might have been, for example, a  
17 plan for intensive development of a site before  
18 it then became historic, is that relevant to  
19 whether or not the current development plan is  
20 consistent with the purpose of the act?

21 A. No. Actually, Meridian Hill Park is an  
22 example. There were streets and houses on that

1 site before the park was developed in the teams.  
2 It's a park now.

3 Q. Okay. Thank you.

4 MS. BROWN: Follow-up?

5 MAYOR'S AGENT BYRNE: Yes.

6 RECROSS EXAMINATION

7 BY MS. BROWN:

8 Q. So, in Georgetown in the lots that were  
9 created before the creation of the historic  
10 district, they're irrelevant to the historic  
11 considerations of subdivision in Georgetown?

12 A. I'm not an expert in Georgetown. I know  
13 it was made historic in the late, about 1950 by  
14 the Old Georgetown Act.

15 Q. But are they historic?

16 A. Yes. I think they were --

17 Q. They were created before the construction  
18 of the houses or were created before the --

19 (Cross-talk.)

20 MS. SELLIN: Well, I know that when  
21 Pierre L'Enfant landed at the bottom, there were  
22 40 houses in Georgetown. And I presume there

1    were streets.    I guess there were some  
2    plantations, and some of them are still there,  
3    Tudor Place.

4                MS. BROWN:    Okay.    No more questions.

5                MS. SELLIN:    Oh, no.    Tudor Place was  
6    built afterwards, I think.    Anyway.

7                MAYOR'S AGENT BYRNE:    Okay.    All right.  
8    Thank you, Ms. Sellin.

9                MS. SELLIN:    You're welcome.

10                (The Witness was excused.)

11                MAYOR'S AGENT BYRNE:    Next witness.

12                MS. FERSTER:    Kirby Vining.

13                (Pause.)

14                MAYOR'S AGENT BYRNE:    Okay.    Mr. Vining,  
15    welcome.    I don't think that you were here when I  
16    swore people.    Were you?

17                MR. VINING:    I was.

18                MAYOR'S AGENT BYRNE:    Did you?

19                MR. VINING:    I did not.    Should I do that  
20    now?

21                MAYOR'S AGENT BYRNE:    Please do, yes.

22    So, do you promise to tell the whole truth to the

1 best of your ability?

2 MR. VINING: I do.

3 MAYOR'S AGENT BYRNE: Thank you very  
4 much. Please state your name for the record.  
5 Whereupon,

6 KIRBY VINING

7 was called as an expert witness and testified as  
8 follows:

9 DIRECT TESTIMONY

10 MR. VINING: My name is Kirby Vining. I  
11 live very close to the McMillan site. I've been  
12 hoping to see something interesting and  
13 beneficial to the community happen to this site  
14 since I first learned about it in 1990. I'm  
15 still hopeful, but the plan before you is  
16 discouraging.

17 I will mention in passing that the  
18 hearing notice states that this case concerns  
19 Square 3128 (sic), lot 800, the same designation  
20 on the deed for the property and on the D.C.  
21 Historic Landmark designation for the property.  
22 Yet you're being asked to agree that it is really



1 122 record lots.

2 I find it disingenuous, to say the least,  
3 that this detail, perhaps useful to the DCRA, is  
4 being brought before you as an argument to  
5 subdivide a designated D.C. Historic Landmark,  
6 but was not brought out during any of the prior  
7 historical or zoning hearings for consideration.

8 The Applicant's prehearing statement,  
9 indeed the literature of the Mayor's Agent's  
10 cases, makes frequent use of the, quote,  
11 "necessary in the public interest," unquote,  
12 standard, which is obviously of special concern  
13 to you today. The subdivision of the McMillan  
14 site is necessary to effectuate the special merit  
15 you found in the previous hearings for this  
16 development project.

17 In the case of this development, the City  
18 has gone to great lengths and used a lot of money  
19 to thwart and warp the public interest,  
20 characterizing the public as opposition that is  
21 to be subdued and neutralized, not heeded.  
22 DMPED's hiring of a special -- of a public

1 relations firm in Baltimore, Maryland, to  
2 discredit and neutralize opposition to this  
3 project --

4 MS. BROWN: Objection. Relevancy.

5 MAYOR'S AGENT BYRNE: I'll let him go on.

6 MR. VINING: Opposition to this project  
7 is the subject of recent press reporting. That  
8 reporting further describes efforts using funds  
9 appropriate by the D.C. Government to urge our  
10 major local media outlets to avoid covering the  
11 opposition to this project.

12 That was successful, so our local media  
13 have, in general, only presented the City's side  
14 of the story. Every single public hearing on  
15 this development has shown overwhelmingly persons  
16 testifying against the surplusing of the  
17 property, against the height and massings of  
18 these buildings, against the demolition of 80 to  
19 90 percent of the site. That the public interest  
20 is something the City has opposed throughout the  
21 project.

22 The 7,300 or so signatures on our

1 petition to request that the City seek more  
2 creative alternative proposals for the McMillan  
3 site, and the results of about 1,000 door-to-door  
4 surveys of households in the immediate  
5 neighborhood expressed the public interest.

6           Yet, the City has worked not only to  
7 blindside these public interests, but has paid  
8 money to suppress them. Where is the public  
9 interest in this?

10           The public interest can also be  
11 interpreted financially. Someone is going to  
12 benefit enormously by this project, but it is  
13 arguably not the District or the people of the  
14 District of Columbia. I would like to note that  
15 most of the documents on which my remarks are  
16 based have been extremely difficult to obtain,  
17 and I have been unable to obtain several more  
18 related documents through the FOIA process,  
19 Freedom of Information Act process.

20           Some of these documents have also been  
21 requested by the McMillan Advisory Group,  
22 including the land disposition and development

1 agreement, the amended summary term sheet, and  
2 information concerning Vision McMillan Partners'  
3 economic return on this investment.

4 All the DMPED documents that I have  
5 reviewed are the result of FOIA requests,  
6 successful FOIA requests. One FOIA request  
7 produced documents only after a two-year legal  
8 appeal.

9 In my various capacities with the Friends  
10 of McMillan Park and in the McMillan Advisory  
11 Group, or the MAG, I currently have two FOIA  
12 requests in the appeals process and filed another  
13 in behalf of the MAG this past week for yet  
14 another set of documents that DMPED has not been  
15 willing to provide short of a FOIA request. Does  
16 this serve the public interest?

17 One of the documents we present to you is  
18 a spreadsheet of predevelopment costs associated  
19 with this project for the years 2010 to 2014 and  
20 paid by the District obtained through FOIA  
21 requests for the development management agreement  
22 documents concerning the funding of this project.

1 Please consider whether costs are, quote,  
2 "necessary in the public interest" of this  
3 project.

4           The Baltimore PR firm mentioned above is  
5 one of the two firms noted as having billed DMPED  
6 for services to discredit and neutralize the  
7 public interest. This interesting item includes  
8 both an invoiced amount of \$28,000 and then a  
9 negative \$28,000, the amount apparently removed  
10 when some of us pointed out to the D.C. Council  
11 that this was going on.

12           Note that the lead counsel for DMPED and  
13 BMP has billed a total of \$646,000, accounting  
14 for over 10 percent of the development management  
15 agreement costs reimbursed for this project,  
16 second only in value to the architects' costs.  
17 What public interest does this serve?

18           District Auditor Kathy Patterson is  
19 quoted in recent press saying, quote, "It is  
20 worth looking at these costs in terms of what  
21 D.C. is getting for that money," unquote. In  
22 another recent article, District Chief Financial

1 Officer Jeffry DeWitt is quoted telling the  
2 council that funds are not sufficient to complete  
3 the land disposition agreement, the budget being  
4 short \$33 million for this purpose. Even after  
5 the land sale, the District would be short \$6  
6 million. Council Chairman Mendelson made similar  
7 remarks about these finances in recent council  
8 oversight hearings.

9 More readily and publicly available  
10 council documents concerning the finances of this  
11 project, the Economic Development Committee  
12 Report on PR 2010-82 to 84, the land disposition  
13 and surplus legislation, includes some highly  
14 unusual figures. The City pays \$76,500,000 for  
15 demolition and site preparation. The developer  
16 paid \$72,850,000 to build the buildings, less  
17 than the cost of the development and preparation.  
18 And the City sells the land to the developer for  
19 \$27,100,000 -- one-third of the Office of Tax and  
20 Revenue's current assessment of the land's value.

21 What part of this is in the public  
22 interest? Taxpaying voters, mere mortals who

1 live in the real world -- the public, in other  
2 words -- would not sell their home for one-third  
3 of its assessed value or agree to demolish it at  
4 their own expense for a buyer who planned to  
5 erect a structure valued at less than the cost of  
6 the demolition.

7           Someone is going to benefit enormously  
8 from this, but it is demonstrably not the public  
9 interest. I hope that this information will be  
10 included in your deliberations concerning the  
11 question of whether this subdivision, which would  
12 allow the implementation of this project, is  
13 indeed necessary in the public interest. Thank  
14 you.

15           MAYOR'S AGENT BYRNE: Okay. Thank you.

16           Ms. Ferster?

17           MS. FERSTER: No questions.

18           MAYOR'S AGENT BYRNE: Okay.

19           MS. BROWN: No questions.

20           MAYOR'S AGENT BYRNE: Mr. Otten?

21           MR. OTTEN: Yes.

22           DIRECT EXAMINATION

1 BY MR. OTTEN:

2 Q. Good afternoon, Mr. Vining. It's morning  
3 still; excuse me.

4 (Laughter.)

5 BY MR. OTTEN:

6 Q. In your testimony, you go into DMPED's  
7 hiring and costs associated with this project and  
8 subsequent request for subdivision, correct?

9 A. Yes.

10 Q. And --

11 A. Predevelopment costs? Is that what  
12 you're talking about? That's what I was talking  
13 about is the predevelopment costs.

14 Q. The development cost -- DMPED is funding  
15 these costs is what I heard you testify to?

16 A. Yes. That's my understanding.

17 Q. And one of the points you raised here is  
18 DMPED hiring a PR firm to discredit and  
19 neutralize public opposition; is that correct?

20 A. Yes.

21 Q. Did I hear that? And the application for  
22 this request for subdivision, are you aware that



1 it is signed by DMPED, by representatives of  
2 DMPED?

3 A. The application for the subdivision for  
4 this hearing right here?

5 Q. Yes. The one we got today.

6 MAYOR'S AGENT BYRNE: The one that's  
7 given to the surveyor.

8 MR. OTTEN: Right.

9 MAYOR'S AGENT BYRNE: So, where are you  
10 going with this, Mr. Otten?

11 MR. OTTEN: I just want to make sure I'm  
12 --

13 (Cross-talk.)

14 MAYOR'S AGENT BYRNE: It's signed or it's  
15 not signed. I have the document. You don't care  
16 whether he testifies whether --

17 MR. OTTEN: Okay.

18 BY MR. OTTEN:

19 Q. But on this document, it mentions Mr.  
20 Jeffry Miller, DMPED. Does that name ring a  
21 bell?

22 A. Yeah. He was the project manager.

1           MAYOR'S AGENT BYRNE: Okay. I'm going to  
2 cut this off, because I don't -- I think that,  
3 frankly, Mr. Vining, with all respect, I think  
4 that your concerns about the way DMPED has -- the  
5 finances of the project are not relevant to my  
6 consideration. And I'm not going to allow any  
7 questions about that. It's in the record. If  
8 people want to appeal on that basis, they're free  
9 to do so. But I'm not going to allow for  
10 questions on that.

11           MR. OTTEN: Mr. Byrne, you keep bringing  
12 up an appeal. Are we planning for an appeal? Is  
13 that what you're suggesting?

14           MAYOR'S AGENT BYRNE: Well, I'm sure that  
15 Ms. Ferster is planning for an appeal.

16           MS. FERSTER: Yes.

17           (Laughter.)

18           MR. OTTEN: I mean, it just seems so set  
19 in your decision.

20           MAYOR'S AGENT BYRNE: Well, I have to set  
21 limits on what I'm considering. And if you don't  
22 like the limits, the remedy is to go to court and

1 appeal. And that's what I'm trying to make  
2 clear.

3 MR. OTTEN: Well, I'm just asking  
4 questions about his testimony.

5 MAYOR'S AGENT BYRNE: I understand. But  
6 I'm saying that much -- some of his testimony is  
7 -- I let him testify because he's a public  
8 witness who has -- I want to give them leeway to  
9 sort of express their views because it's  
10 important that they have an opportunity to do  
11 that.

12 But in terms of delving into the finances  
13 or the relationship between DMPED and a public  
14 relations firm, I really am not going to listen  
15 to questions about it.

16 MR. OTTEN: Can I ask questions about the  
17 application that's triggered this hearing?

18 MAYOR'S AGENT BYRNE: This one?

19 MR. OTTEN: Yes.

20 MAYOR'S AGENT BYRNE: Well, I don't see  
21 -- he's not a good witness to ask that. He  
22 hasn't even seen it before, and he has no

1 expertise on the question.

2 MR. OTTEN: Well, it's specific just to  
3 the cover page and the receipt.

4 MS. BROWN: I would object. He didn't  
5 testify to it.

6 MAYOR'S AGENT BYRNE: That's true. It's  
7 outside the scope of his testimony.

8 MR. OTTEN: He's talking about DMPED  
9 spending money. I wanted to ask him if he knew  
10 how much DMPED spent on this application process.

11 MAYOR'S AGENT BYRNE: I'm not going to  
12 allow that.

13 BY MR. OTTEN:

14 Q. Are you aware, Mr. Vining, if DMPED has  
15 hired Holland and Knight, through your FOIA's?

16 A. They are listed --

17 MS. BROWN: Relevancy.

18 MR. OTTEN: You're here because of that,  
19 correct, Ms. Brown?

20 MAYOR'S AGENT BYRNE: Well, I don't think  
21 there's any question about the fact that DMPED is  
22 part of the development team. And whether -- and

1 that Ms. Brown is the lawyer for the development  
2 team. And so, I don't really see what is gained  
3 by going down that path right now.

4 MR. OTTEN: I'm just trying to understand  
5 why the application receipt has Ms. Brown's  
6 address with Holland and Knight at 1350  
7 Pennsylvania Avenue, the Wilson Building.

8 MAYOR'S AGENT BYRNE: And why do you need  
9 to know that?

10 MR. OTTEN: Because, again it shows the  
11 bias here, the collusion.

12 MAYOR'S AGENT BYRNE: There's no  
13 collusion.

14 MR. OTTEN: There absolutely is.

15 MAYOR'S AGENT BYRNE: She represents the  
16 District of Columbia, as well as VMP, right? I'm  
17 sorry. She represents VMP, which is the partner  
18 of the District of Columbia.

19 MR. OTTEN: That's why I'm confused.

20 MAYOR'S AGENT BYRNE: They're partners.  
21 There's no confusion. They're partners.

22 MR. OTTEN: Well, at the last hearing,

1 DMPED was not represented by any lawyer.

2 MAYOR'S AGENT BYRNE: That's correct.

3 MR. OTTEN: But yet, in the application,  
4 which we're seeing here today in full for the  
5 first time, we see Ms. Brown is representing  
6 herself as, with an address of the Wilson  
7 Building.

8 MAYOR'S AGENT BYRNE: Okay. You can  
9 raise something about that, but Mr. Vining is not  
10 the correct witness to deal with that.

11 MR. OTTEN: Okay.

12 BY MR. OTTEN:

13 Q. Mr. Vining, you mentioned 7,000 petition  
14 signatures. Would you say that those people who  
15 signed that petition are disturbed by the  
16 subdivision of this site that would allow this  
17 project to move forward?

18 A. That would be interpreted.

19 MS. BROWN: Objection. That calls for a  
20 speculative answer. We have no idea whether the  
21 signatures dealt with just the development of the  
22 site or the subdivision specifically.

1           MR. VINING: I could submit the copies of  
2 those petitions and let them speak for themselves  
3 if that would be of use.

4           MR. OTTEN: I would appreciate that.

5           MAYOR'S AGENT BYRNE: Okay.

6           BY MR. OTTEN:

7           Q. And, just off the top of your head, do  
8 you recall what the petition says?

9           A. I don't have it. I have it in a thumb  
10 drive. I could submit it today. But I don't --

11           MAYOR'S AGENT BYRNE: It's really not  
12 necessary. He's going to submit a copy.

13           MR. OTTEN: Okay.

14           MR. VINING: I'll provide them.

15           MAYOR'S AGENT BYRNE: One is enough just  
16 to see the text, okay?

17           BY MR. OTTEN:

18           Q. And you're aware that, in this  
19 subdivision, parcel 1 contains the medical office  
20 building?

21           A. I don't have it in front of me, the  
22 detail.

1 Q. Okay.

2 MR. OTTEN: Okay. No more questions.

3 Thank you.

4 MAYOR'S AGENT BYRNE: Okay.

5 Right. Ms. Brown?

6 MS. BROWN: No questions.

7 MAYOR'S AGENT BYRNE: Okay. Very good.

8 Thank you, Mr. Vining.

9 MR. VINING: Thank you.

10 (The Witness was excused.)

11 MS. FERSTER: Tony Norman, our last  
12 witness.

13 MAYOR'S AGENT BYRNE: Mr. Norman.

14 (Pause.)

15 MAYOR'S AGENT BYRNE: Good morning, Mr.  
16 Norman.

17 MR. NORMAN: Good afternoon. Good  
18 morning, wherever we are in this day.  
19 Whereupon,

20 TONY NORMAN

21 was called as an expert witness and testified as  
22 follows:

OLENDER REPORTING, INC.  
1100 Connecticut Avenue NW, #810, Washington, DC 20036  
Washington: 202-898-1108 • Baltimore: 410-752-3376  
Toll Free: 888-445-3376



1           MAYOR'S AGENT BYRNE: Please state your  
2 name for the record.

3           MR. NORMAN: Tony Norman.

4           MAYOR'S AGENT BYRNE: All right.

5                         DIRECT TESTIMONY

6           MR. NORMAN: I'm part of Friends of  
7 McMillan and Chairman of the McMillan Park  
8 Committee. I've also served as the ANC  
9 Commissioner and Chairman of ANC 1-B, which is  
10 the commission that takes up two-thirds of the  
11 historic site. I also had the great opportunity  
12 of serving as President of the Bloomingdale Civic  
13 Association, of which this site is located.

14                        I'm here today to testify against the  
15 subdivision petition on the grounds that it's  
16 inconsistent with the historic act, and also that  
17 it's not necessary for the construction of this  
18 project of special merit.

19                        Firs, I want to start off by saying that  
20 -- I want to deal with this. They submitted  
21 these, what I call the "magic lots" or the  
22 "metaphysical lots" that appear and reappear at

1 1871. And for the basis that they submit that,  
2 that's not necessarily relevant to the  
3 consideration of the subdivision as it relates to  
4 this, because first of all, the Federal  
5 Government assumed this property. And the  
6 historical characters were built after that, that  
7 made this property locally and nationally  
8 historic.

9           So therefore, it's not relevant that --  
10 the magic lots that appear and reappear, it's not  
11 relevant whether they recorded them or not. And  
12 plus, they're not proposing to propose to build  
13 122 lots on the site. I mean, their  
14 recommendation is to subdivide, I think,  
15 essentially six parcels, which is not relevant  
16 that that concept of the lots -- they're assuming  
17 that, because the historic site, part of the site  
18 comes back to the control of the District, that  
19 the magic lot concept reappear even though  
20 they're recorded in the Surveyor's Office, and  
21 therefore that should have some bearing or have  
22 some powerful mitigating impact on the Mayor's

1 Agent in determining whether or not the  
2 subdivision is relevant for this project of  
3 special merit. And I submit that it is not.

4 Also, the subdividing of this site  
5 essentially does destroy the open character of  
6 the site, which is part of the historic --  
7 protections of the historic preservation laws.  
8 And also, in terms of their historic expert,  
9 Emily Eig report, it goes against the  
10 recommendations in her report.

11 I also want to point out the concerning  
12 part about that, even in the Mayor's Agent's  
13 decision, basically talked about the open-space  
14 character. And I think, in all due respect, the  
15 rationale -- Mayor's Agent's concede that the  
16 open space as a whole will be destroyed because  
17 of the destruction. But then the Mayor's Agent  
18 goes on, and I have a copy in my testimony, to  
19 state in the decision that that's not necessarily  
20 relevant because it was never open to the public  
21 in the first place.

22 And I think the Mayor's Agent cites Emily

1 Eig. And in her report -- first of all, Emily  
2 Eig did not state that and it's not in her  
3 report. And if you do look at her report, on  
4 page 64 and 63, the site was closed to the public  
5 in 1941. It was open to the public prior to  
6 that, 1941.

7 And I want to say the relevancy of that  
8 is, in her report, the protection of the  
9 continuous open space is very much such a  
10 character of the site. The subdividing of that  
11 will destroy that continuous open space of this  
12 site.

13 And secondly, in terms of citing the  
14 Mayor's Agent, once again in all due respect to  
15 the Mayor's Agent's decision as it relates to the  
16 subdividing here, the Mayor's Agent speaks about  
17 the reservation that the Applicant's vision, as  
18 well as the District, would be a steward of  
19 protecting the historic elements, as well as when  
20 they construct the site, be respectful of the  
21 historic elements.

22 And the Mayor's Agent expressed

1 reservations about their protecting that. In  
2 fact, he even stated that he would not leave that  
3 decision to the Applicant. Therefore, I think  
4 that was a contingency in the order that the  
5 Historic Preservation Board -- they would go to  
6 the board to review some of those items and the  
7 protection of that.

8 I would state that the subdividing the  
9 site would leave that once again to the  
10 discretion of these Applicants, how they execute  
11 on that subdivision, whether or not they would  
12 protect the historic elements, be it the  
13 continuousness of the open space and what they  
14 put on those separate lots.

15 Will it be respectful of the historic  
16 preservation laws? Will it be respectful of the  
17 Secretary of the Interior's standard? Will it be  
18 respectful of Emily Eig's report, which is a  
19 condition that the Mayor's Agent put in his order  
20 to protect, that the Applicants will follow up on  
21 that?

22 And I would submit that this subdivision

1 does not give us any assurances that those things  
2 will be complied with. Once again, the  
3 subdivision, it wouldn't be necessary -- I don't  
4 think they've made a case that the subdivision is  
5 really necessary for the project of special  
6 merit.

7           And it seemed to me like the strongest  
8 argument, once again, is the "magic lot" theory,  
9 that we need to do that. And that the actual  
10 subdivision is a threat to the open space and the  
11 historic character of the site. That's not  
12 theoretical. Just because you write something in  
13 a plot and it is subdivided doesn't necessarily  
14 mean that there's no harm to it. There is a harm  
15 because the potentiality, those subdivisions can  
16 destroy the open space as well as the historic  
17 character, depending on how they are developed.

18           So they are not benign just by the simple  
19 fact of -- subdividing a site is not a benign act  
20 as it relates to the open space and the  
21 historical character. So I would strongly  
22 disagree with that assumption on the part of the

1 Applicant.

2           So, in conclusion, I just want to state,  
3 and I have it all in my written testimony here,  
4 that the subdivision should be denied because it  
5 is inconsistent with the historic laws, as well  
6 as their historic consultant report and Emily  
7 Eig's recommendation. And secondly, because it  
8 is not necessary for the construction of this  
9 project of special merit. And the Applicants  
10 have not proved their case that it would be.  
11 Thank you.

12           MAYOR'S AGENT BYRNE: Thank you, Mr.  
13 Norman.

14           Questions, Ms. Ferster?

15           (Ms. Ferster shook her head no.)

16           MAYOR'S AGENT BYRNE: Ms. Merritt?

17           MS. MERRITT: No questions.

18           MAYOR'S AGENT BYRNE: Mr. Otten?

19           MR. OTTEN: Yes.

20                         DIRECT EXAMINATION

21           BY MR. OTTEN:

22           Q. Good morning, Mr. Norman. Are you

1 referring to this project as a project of special  
2 merit just because the Mayor's Agent ruled on  
3 that in the prior case?

4 A. Yes. That's the determination that the  
5 Mayor's Agent made. I don't agree with that, and  
6 I think in the record, I was -- but technically,  
7 that is the decision. That's the ruling. And  
8 that's as it stands until that is overruled. So  
9 therefore, I accept it as the project of special  
10 merit, yes.

11 Q. So, you believe that the project rises to  
12 a level of special merit, or is that just what  
13 you're saying the Mayor's Agent said?

14 A. I'm saying that's what the Mayor's Agent  
15 said. I do not believe it rises to the merits of  
16 special agent (sic).

17 Q. Okay. I just wanted to clarify.

18 A. I think there was the order. I think in  
19 all due respect that there is some --

20 (Cross-talk.)

21 BY MR. OTTEN:

22 Q. Right now, you talk about --



1           A.   Yes.  I accept it as the Mayor's Agent's  
2   ruling.

3           Q.   Okay.  And I heard you testify to one  
4   contiguous open site is currently what we have  
5   there right now, correct?

6           A.   That's correct.

7           Q.   And it's one tax lot, correct?  One tax  
8   lot?  It's one tax lot, from the prior hearing?  
9   Were you there?

10          A.   One tax lot?

11          Q.   Yeah.

12               MAYOR'S AGENT BYRNE:  I don't think you  
13   need to go there.

14               MR. OTTEN:  Okay.

15               BY MR. OTTEN:

16          Q.   But currently, this contiguous open space  
17   is all public, correct?  It's owned by the  
18   District of Columbia, public land?

19          A.   Yes.  It's owned by the District of  
20   Columbia.

21          Q.   And as such, would you define that as a  
22   characteristic of the site, an historic

1 characteristic of the site?

2       A. Open space is a historic characteristic  
3 of the site. I mean, when you look at the  
4 McMillan plan, when you look at the L'Enfant  
5 plan, when you look at -- even Olmsted doing the  
6 landscaping on the site, it was always considered  
7 part of the open-space character of that site.  
8 And it defines what that site is. And I think  
9 that's part of the central historic character of  
10 the site.

11       Q. Okay. And the public ownership of the  
12 entire site right now, is that a defining  
13 characteristic of this site?

14               MAYOR'S AGENT BYRNE: Mr. Otten, excuse  
15 me.

16               Who is taking photographs? Do you have  
17 permission from anybody to take photographs?

18               UNKNOWN PHOTOGRAPHER: I didn't know I  
19 needed it.

20               MAYOR'S AGENT BYRNE: Tim, what do we --  
21 do you have a policy on that?

22               MR. DENNEE: Well, it is a public

1 hearing. So I think people are permitted to  
2 photograph or even record.

3 MAYOR'S AGENT BYRNE: Really?

4 MR. DENNEE: It is polite to introduce  
5 yourself and say what it's for and let everybody  
6 know.

7 MR. ANDERSON: I did introduce myself to  
8 Mr. Byrne earlier. This is [inaudible], and my  
9 name is Jeff.

10 MAYOR'S AGENT BYRNE: You're working with  
11 him?

12 MR. ANDERSON: We're working together.

13 MAYOR'S AGENT BYRNE: Okay. So, I guess  
14 I -- I mean, if you don't mind, I think it would  
15 be better if you did it when somebody wasn't  
16 testifying. Because it's distracting. But like  
17 in between and stuff, if you want to take photos,  
18 that's fine. Is that okay? Thanks.

19 MR. OTTEN: Resume?

20 MAYOR'S AGENT BYRNE: All right. Go  
21 ahead, sir.

22 BY MR. OTTEN:

1           Q.   Mr. Norman, we were talking about this  
2   one contiguous public site, as you testified.  
3   One of these, would you consider the fact that  
4   it's owned by the public, by the District of  
5   Columbia, or prior, the Federal Government, is  
6   that a historic defining characteristic of this  
7   site?

8           A.   I don't necessarily think whether it's  
9   owned by the Federal Government is defining, but  
10   public access and public view I think is part of  
11   the defining character.

12          Q.   Would you agree that the proposed  
13   subdivision would mean that a significant portion  
14   of this now one contiguous public site would be  
15   owned by private interests?

16          A.   I don't necessarily think subdividing  
17   alone would give that. But it does create the  
18   potentiality of that, which contradicts the  
19   public access or can contradict the public access  
20   or character.

21          Q.   Okay. And the claim that the so-called  
22   park in the southern, south of the southern

1 service court, the claim that that provides open  
2 contiguous land and vistas, what's your take on  
3 that?

4 MS. BROWN: Objection. I'm not sure he  
5 testified to that.

6 MAYOR'S AGENT BYRNE: He didn't testify  
7 on that.

8 MR. OTTEN: He testified to the division  
9 of the parcels, one of those --

10 MAYOR'S AGENT BYRNE: He didn't testify  
11 at all about the park at the southern end.

12 MR. OTTEN: Okay. Let me ask you this.

13 BY MR. OTTEN:

14 Q. Mr. Norman, parcel 6 in this proposed  
15 subdivision, are you aware of what that parcel is  
16 in this subdivision?

17 A. As I understand it, they propose it to be  
18 part of the park. And the whole site is  
19 considered a park. Even if you look at the Emily  
20 Eig report, in the Applicant's own expert, it was  
21 designated a park by William Taft.

22 MS. BROWN: Objection. We didn't have

1 any expert testify to the historic nature of the  
2 park.

3 MS. FERSTER: I think he's referring to  
4 the EHT report.

5 MR. NORMAN: I'm referring to Emily Eig's  
6 report.

7 MS. FERSTER: Which is in the record.

8 MR. NORMAN: If you read her report as  
9 she refers to, and cites and documents that it  
10 was declared -- the whole entire 90-acre site was  
11 declared a park. So the question becomes, what  
12 is an active park and what is an inactive park?  
13 But the whole site was declared a park.

14 BY MR. OTTEN:

15 Q. And this subdivision would bring this  
16 whole park down to a portion of the site,  
17 correct? Perhaps a third or less?

18 A. Once again, I think the subdivision  
19 creates the potentiality of doing that. It would  
20 permit -- someone chose to do that, it permits  
21 that. Doesn't do it in and of itself. But it  
22 does create the potentiality of that.

1       Q.   Okay.  You mentioned, you testified that  
2   you're the Chairman of the McMillan Park  
3   Committee.  Can you tell us a little bit more  
4   about that?  What is that?

5       A.   The McMillan Park Committee was composed  
6   of -- it has evolved into Friends of McMillan  
7   now.  But it was part of the residence,  
8   surrounding residence, the ANC commissioners.  
9   And we're the group that actually did the  
10   application for the historic site.

11      Q.   Did the application?

12      A.   And we also worked very closely with  
13   Emily Eig in preparing her report, which I  
14   thought that's in the record, was an excellent  
15   report.  But we're the group that did the  
16   historic application, did a lot of the research  
17   on the historic character of the site.  And we've  
18   been involved with the site for the last 20  
19   years.

20      Q.   And that's the application that was filed  
21   on June 21st, 1990?

22      A.   Yes.

1 Q. Okay. And in that application, you speak  
2 of this site as one contiguous, open space,  
3 correct?

4 A. That's correct.

5 Q. And that you mentioned some of the  
6 historic players that created this site, correct,  
7 in this application?

8 A. Yes.

9 Q. And you include Frederick Law Olmsted,  
10 right?

11 A. Frederick Law Olmsted, Jr., the  
12 landscaping for the site.

13 Q. Yes.

14 A. Yes.

15 Q. And Allen Hazen?

16 A. Yes, the engineer.

17 Q. Um-hm. And Henry Alexander Macomb?

18 A. Yes.

19 Q. Macomb Street in D.C. is perhaps named  
20 after him?

21 A. Yes.

22 MAYOR'S AGENT BYRNE: We're going with



1 this. I mean, it's a public document. And if  
2 you want to submit into the record of this  
3 hearing, that's fine.

4 MR. OTTEN: Um-hm. I'm just trying to --

5 MAYOR'S AGENT BYRNE: But I don't need to  
6 hear all the people who were involved in the  
7 creation of the reservoir.

8 MR. OTTEN: I just wanted to make sure  
9 this was the same application.

10 MAYOR'S AGENT BYRNE: You did? Okay.

11 MR. OTTEN: Okay.

12 BY MR. OTTEN:

13 Q. So, and the application specifically keys  
14 in on how this is one open, contiguous space as  
15 one of its defining characteristics?

16 A. That's correct.

17 MS. BROWN: Objection. That report  
18 speaks for itself, the application.

19 MR. OTTEN: Probably not.

20 MAYOR'S AGENT BYRNE: I'll let him answer  
21 the question.

22 MR. NORMAN: Yes, yes. That's a central

1 component to the site, the character of the site,  
2 yes.

3 BY MR. OTTEN:

4 Q. And would you be surprised that DMPED was  
5 not aware of this application in their approval  
6 of the subdivision application?

7 A. No.

8 MS. BROWN: Objection.

9 MAYOR'S AGENT BYRNE: Sustained.

10 MR. OTTEN: Why? I didn't even -- she  
11 didn't even claim the reason for the objection.

12 MAYOR'S AGENT BYRNE: Well, because it's  
13 not relevant to anything. I mean, what DMPED was  
14 aware of when they filed the application I don't  
15 care about. I care about what the --

16 (Laughter.)

17 MAYOR'S AGENT BYRNE: I'm not here to  
18 review whether they are performing at the level  
19 that the citizens of D.C. want them to perform  
20 at. My question is whether the special merit of  
21 this proposal justifies the subdivision.

22 MR. OTTEN: But the efficacy of this

1 special merit is being presented by DMPED.

2 MAYOR'S AGENT BYRNE: But it doesn't  
3 allow you to then just sort of go after DMPED to  
4 whatever extent you want to. I don't -- their  
5 subjective processes are not relevant to my  
6 decision.

7 MR. OTTEN: They're not supposed to be  
8 subjective. That's the point. They're supposed  
9 to be based on facts.

10 MAYOR'S AGENT BYRNE: Okay. So I've made  
11 my ruling, and you should proceed with a  
12 different question.

13 BY MR. OTTEN:

14 Q. Mr. Norman, what do you think Frederick  
15 Law Olmsted, Jr., would say about this project  
16 today?

17 MS. BROWN: Objection. Speculation.

18 MAYOR'S AGENT BYRNE: Sustained.

19 MR. OTTEN: I think that's a rhetorical  
20 question.

21 MAYOR'S AGENT BYRNE: I think so.

22 MR. OTTEN: That's it. No more

1 questions. Thank you.

2 MAYOR'S AGENT BYRNE: Okay. Thank you.

3 Ms. Brown, do you have questions?

4 MS. BROWN: Just a couple of quick ones.

5 CROSS EXAMINATION

6 BY MS. BROWN:

7 Q. Mr. Norman, I just want to clarify and  
8 make sure I understood correctly something that  
9 you said at your opening part of your testimony.  
10 You said that the subdivision is not necessary  
11 for construction?

12 A. That's correct.

13 Q. So that this construction approved under  
14 the special merit project can proceed without  
15 subdivision?

16 MS. FERSTER: I don't think that was your  
17 testimony.

18 MAYOR'S AGENT BYRNE: I'll let him --

19 MS. BROWN: I think that he's --

20 MAYOR'S AGENT BYRNE: I think he has to,  
21 he can decide what his testimony was.

22 MR. NORMAN: Repeat it again? What did

1 you say that?

2 BY MS. BROWN:

3 Q. Yes, that are you saying that this  
4 project of special merit as approved by the  
5 Mayor's Agent under the previous Mayor's Agent  
6 order can proceed without the subdivision?

7 A. No, I don't think it can proceed without  
8 the subdivision. But I don't -- I'm saying that  
9 it's not -- it's not required that you have the  
10 subdivision to proceed with the construction.

11 Q. That's your position? That's your  
12 understanding?

13 A. I'm against the subdivision.

14 Q. Okay.

15 A. But from the technical requirements of  
16 what the Mayor's Agent has to review, I don't  
17 think it's necessary.

18 Q. Thank you. You've clarified your  
19 testimony. Thank you.

20 MS. BROWN: No more questions.

21 MAYOR'S AGENT BYRNE: Okay.

22 MS. FERSTER: We just want to redirect.

1 MAYOR'S AGENT BYRNE: Sure.

2 REDIRECT EXAMINATION

3 BY MS. FERSTER:

4 Q. So, your testimony regarding what is  
5 necessary, you do not believe that subdivision is  
6 necessary in order to construct a project of  
7 special merit in the legal sense?

8 A. That's correct.

9 Q. Thank you.

10 MAYOR'S AGENT BYRNE: Okay. Good.

11 Thank you, Mr. Norman.

12 MR. NORMAN: Thank you.

13 (The Witness was excused.)

14 MAYOR'S AGENT BYRNE: Okay.

15 MS. FERSTER: Okay. That concludes our  
16 oral testimony, but we have some documents.

17 MS. FERSTER: And, you know, in light of  
18 the Mayor's Agent's ruling on the procedural  
19 issues that you did not want to relitigate  
20 certain issues and you would not allow direct  
21 testimony on issues that you believe to be  
22 already decided in the hearing, we have not

1 elected to proceed with a number of witnesses  
2 that we feel would be relevant to preserve our  
3 legal position, because we feel like we preserved  
4 it in terms of the direct testimony and in the  
5 objections.

6 But we do have a number of written  
7 exhibits for the record, in keeping with the  
8 Mayor's Agent's tradition of allowing very  
9 liberal submission of written testimony.

10 MAYOR'S AGENT BYRNE: Okay. You have a  
11 copy for Ms. Brown, I'm sure?

12 MS. BROWN: And I may object to some of  
13 these submissions, depending on what they are.

14 MAYOR'S AGENT BYRNE: Okay.

15 MS. FERSTER: The Mayor's Agent has  
16 traditionally allowed --

17 MS. BROWN: It doesn't matter --

18 MS. FERSTER: -- written submissions.

19 MS. BROWN: -- whether it's tradition or  
20 not. If they're irrelevant, I can object to  
21 them.

22 MS. FERSTER: And then --

1           MAYOR'S AGENT BYRNE: So, do you want to  
2 characterize these documents in some way or  
3 characterize the documents and explain their  
4 relevance?

5           MS. FERSTER: The first one, it's a  
6 letter from our expert witness, Tom Moriarity,  
7 for the record, explaining why he does not  
8 believe that this is -- the balance of harm to  
9 special merit test has been met here. It is a  
10 written submission.

11           The next is --

12           MS. BROWN: Can we just go through these  
13 one by one?

14           MAYOR'S AGENT BYRNE: Well --

15           MS. BROWN: Or can I reserve my  
16 objections?

17           MAYOR'S AGENT BYRNE: You can reserve  
18 your objections.

19           MS. BROWN: Thank you.

20           MS. FERSTER: And then, the National  
21 Trust has a set of exhibits after this.

22           The next is the testimony of the



1 Committee of 100 on the Federal City.

2 MAYOR'S AGENT BYRNE: That's the  
3 testimony before the HPRB? Okay.

4 MS. FERSTER: The next is a letter from  
5 the National Trust for Historic Preservation  
6 dated January 29th, 2015, to the HPRB.

7 MAYOR'S AGENT BYRNE: Okay.

8 MS. FERSTER: The next is -- actually,  
9 this is also a National Trust exhibit. It's the  
10 NCRC 2006 solicitation.

11 MS. BROWN: I would object to this. It's  
12 irrelevant.

13 MS. FERSTER: And we would ask that it be  
14 allowed for the record.

15 MAYOR'S AGENT BYRNE: And what's the  
16 relevance of it?

17 MS. FERSTER: We have -- we continue to  
18 believe that the balance of -- that the issue of  
19 the development and whether or not the developer  
20 has demonstrated that -- or not the developer,  
21 whether the District of Columbia, really, has  
22 demonstrated that it is necessary in order to

1 intensively develop this site per the subdivision  
2 -- is necessary in order to allow the special  
3 merit benefits of the project.

4 And of course, we have a different view  
5 of what the project is than you do, but our view  
6 is that the project is more limited.

7 And our position, obviously, is that the  
8 failure to competitively bid, pursuant to this  
9 NCRC solicitation, you know, demonstrates that  
10 the District of Columbia has not met their burden  
11 of proof of showing, you know, that in fact the  
12 level or intensity of development is necessary.

13 Again, we are not submitting oral  
14 testimony on the subject because you have  
15 procedurally ruled.

16 MAYOR'S AGENT BYRNE: Right.

17 MS. FERSTER: But we would like this  
18 document to be quoted in the record for the  
19 record.

20 And let me just get -- my last exhibit  
21 also goes to that next point. The last two  
22 exhibits go to that next point, so you can just

1 have your collective objections to those  
2 exhibits.

3 (Laughter.)

4 MS. FERSTER: The next exhibit is a  
5 report to the Council of the District of Columbia  
6 associated with the land disposition resolution.  
7 It's their committee of the whole report dated  
8 November 25th, 2014, again, going to that point

9 MAYOR'S AGENT BYRNE: Going to what  
10 point?

11 MS. FERSTER: The point that I just  
12 articulated, that this is information that  
13 demonstrates that the Applicants, including the  
14 District of Columbia, have not demonstrated that,  
15 in fact, a development of this intensity is  
16 necessary in order to provide the special merit  
17 benefits that justify the destruction of the  
18 historic properties. And then the final exhibit  
19 -- wait, no. Sorry.

20 March 6th, 2015, is a memo to the Council  
21 of the District of Columbia from the McMillan  
22 Advisory Group regarding the DMPED Agency

1 performance oversight hearing, for the record.

2 MAYOR'S AGENT BYRNE: And where is that?

3 MS. FERSTER: It's the next-to-the-last  
4 exhibit.

5 MAYOR'S AGENT BYRNE: Oh, March 6th.  
6 Okay.

7 MS. FERSTER: Yeah. And then the last  
8 set of exhibits are a set of invoices from EYA to  
9 the District of Columbia Office of the Deputy  
10 Mayor --

11 MAYOR'S AGENT BYRNE: I didn't get those.

12 MS. FERSTER: -- Planning. Sorry.

13 (Pause.)

14 MS. FERSTER: Did you get the MAG?

15 MAYOR'S AGENT BYRNE: I got the MAG,  
16 yeah, from March of 2015.

17 MS. FERSTER: And those are a series of  
18 invoices that indicates that, in fact, the  
19 District of Columbia is paying all Vision  
20 McMillan Partners' predevelopment costs,  
21 including the cost of Holland and Knight to  
22 represent VMP in these proceedings, for the

1 record.

2 MAYOR'S AGENT BYRNE: All right.

3 MS. BROWN: All right. So --

4 MS. FERSTER: And then we can go to the  
5 National Trust Exhibits. Oh, and then --

6 (Cross-talk.)

7 MS. FERSTER: And then I will have one  
8 more set of documents, but go ahead.

9 MAYOR'S AGENT BYRNE: Let's deal with  
10 this legal question.

11 MS. BROWN: Okay. So, first I object on  
12 relevancy grounds. Number one, if you ruled it  
13 out of order for oral testimony, it stands to  
14 written testimony as well.

15 MS. MERRITT: Excuse me. Which document  
16 does this go to, which exhibit?

17 MS. BROWN: Well, I thought we were  
18 dealing with them collectively, so --

19 MAYOR'S AGENT BYRNE: We're dealing with  
20 which --

21 MS. BROWN: Let me tell you what I can  
22 accept into the record.

1           MAYOR'S AGENT BYRNE:   Okay.

2           MS. BROWN:   I'm going to set aside the  
3   first document for a moment from the Committee of  
4   100 on the Federal City.   Anything that was  
5   submitted to the Historic Preservation Review  
6   Board should already be in the record.   I have no  
7   objection to another copy being submitted.

8           MAYOR'S AGENT BYRNE:   Okay.   Fine.   So we  
9   have -- so we're accepting in the record the  
10   letter from the National Trust and from the  
11   Committee of 100 to the HPRB, from January 2015.  
12   Right.   Received.

13          MS. BROWN:   So, then I have objections to  
14   the NCRC report.

15          MAYOR'S AGENT BYRNE:   Yep.

16          MS. BROWN:   I have objections to the  
17   committee report.   I have an objection to the  
18   Valbridge Property Advisory letter.   I have  
19   objection to the council memo on the DMPED Agency  
20   performance oversight hearing from McMillan  
21   Advisory Group.   I have an objection to the  
22   invoices for EYA for the legal services and other

1 invoices.

2 MAYOR'S AGENT BYRNE: Okay.

3 MS. BROWN: They're completely irrelevant  
4 to this proceeding. You already ruled on it.  
5 And again, oral testimony, written testimony -- I  
6 doubt that there's the word "subdivision" in any  
7 of this. So it's completely irrelevant.

8 MAYOR'S AGENT BYRNE: Okay. All right.

9 So, I'm going to exclude those documents.  
10 And I'm going to state my reason for doing so.

11 Because I don't think that the inquiry  
12 into the performance of the District of Columbia  
13 in setting the -- in structuring the economic  
14 character of this arrangement or the cost paid to  
15 the parties who are presenting the application  
16 are relevant to the question that's before me,  
17 which is, again, whether the project of special  
18 merit is of such a weight that it outweighs any  
19 destruction that the subdivision would cause to  
20 the site.

21 And I think that if the court of appeals  
22 disagrees with me on that, obviously, there's

1 going to have to be another hearing, probably  
2 before a different Mayor's Agent.

3 But I think it's important for the  
4 historic preservation process that Mayor's Agent  
5 hearings not become an occasion for a political  
6 growing of applicants who are working with the  
7 City. There are other forums in which that may  
8 be appropriate, including the City Council and  
9 including, certainly, at the ballot box.

10 But I think it detracts from the  
11 questions before me, which are essentially  
12 questions of historic preservation. And I'm not  
13 aware of any prior Mayor's Agent's case, and none  
14 have been cited to me, in which the Mayor's Agent  
15 has permitted that degree of scrutiny of all of  
16 the steps leading to a project, especially when  
17 the Mayor's Agent has already determined that  
18 it's a project of special merit.

19 So it would seem to be pointless to put  
20 these in the record. And from the perspective of  
21 the opponents, I've given you a very clean point  
22 on which to appeal if that's what you want to do.



1 MS. FERSTER: I appreciate that.

2 MAYOR'S AGENT BYRNE: Yeah.

3 MS. FERSTER: I have one question. I  
4 don't recall that there was -- I just don't  
5 recall the MAG letter of March 6th, 2015. Was  
6 that in the collective objection?

7 MS. MERRITT: Could you go over the list  
8 again of your objections, just to make sure we've  
9 got them all?

10 MS. FERSTER: Which documents you're  
11 excluding?

12 MS. BROWN: Well, it depends on which  
13 documents -- I'll go through them again, make  
14 sure you all know that I received and what I  
15 object to. So, actually, I can go back to the  
16 very first one from RDS.

17 MAYOR'S AGENT BYRNE: Yeah.

18 MS. BROWN: And that one seems to deal  
19 with all the land development deal and whether or  
20 not it was appropriate. And so I would move to  
21 exclude this document, as well. On page 2 at the  
22 top, it talks about the documents that were

1 reviewed in preparing this report.

2 MS. FERSTER: Actually, all we want is  
3 just to know which -- he's already ruled.

4 MAYOR'S AGENT BYRNE: I haven't ruled on  
5 that document.

6 MS. FERSTER: Oh, I thought you ruled on  
7 everything.

8 MAYOR'S AGENT BYRNE: Well, she reserved  
9 that document for --

10 MS. FERSTER: Oh, okay. Okay. Okay.

11 MS. BROWN: So I could review it.

12 MS. FERSTER: Okay.

13 MS. BROWN: So, you see the bullet  
14 points, and it all relies on the financial  
15 aspects of the deal.

16 MAYOR'S AGENT BYRNE: Yeah. I agree. I  
17 agree.

18 MS. BROWN: So I would exclude that.

19 MAYOR'S AGENT BYRNE: Yeah.

20 MS. BROWN: The RDS, I would ask for it  
21 to be excluded. The NCRC, phase 1 solicitation  
22 document, the council committee report to be

1 excluded. The Valbridge property advisors  
2 letter, the memo from the McMillan Advisory Group  
3 to the council as a whole, dated March 6th.

4 MS. FERSTER: And can you articulate your  
5 specific reason why the MAG letter is  
6 objectionable to you?

7 MS. BROWN: Because, number one, it's to  
8 the council and it's talking about agency  
9 oversight proceedings. And it also goes through  
10 details of the financial concerns with the  
11 project.

12 MS. FERSTER: I mean, I would ask that --  
13 this document, certainly, goes to some of the  
14 issues that the Mayor's Agent has said are before  
15 --

16 MS. BROWN: If you can find the word  
17 "subdivision."

18 MAYOR'S AGENT BYRNE: Which one?

19 MS. FERSTER: Well, certainly on the MAG  
20 to you that it has not been acceptably -- the  
21 views have not been acceptably considered in the  
22 project. So, you know, it's a written letter

1 from the McMillan Advisory Group, which is this  
2 broadside public entity, you know, that was  
3 created by the D.C. Government to advise it. So  
4 I think that that should, at least in its written  
5 format, should be allowed into the record.

6 MS. BROWN: And I object to it.

7 MAYOR'S AGENT BYRNE: Okay.

8 MS. BROWN: It doesn't deal with the  
9 subdivision question before you.

10 MAYOR'S AGENT BYRNE: I'm going to allow  
11 it into the record for the limited purposes that  
12 Ms. Ferster suggested, which is to show the  
13 concern of that group with their consultation  
14 with them. Otherwise, no.

15 MR. OTTEN: Mr. Byrne, can we go back to  
16 the NCRC document, which I heard there was an  
17 objection to? I believe that should be included.  
18 It does highlight the open contiguous land that  
19 exists there now, and that's what we're talking  
20 about with this subdivision, that the NCRC  
21 document.

22 MAYOR'S AGENT BYRNE: No. I'm not going

1 to allow it in for that. I think that that  
2 point, the open character of the land, has been  
3 fully established. And I think that the  
4 prejudicial aspects, if you will, the irrelevant  
5 aspects outweigh its ability to make clearer the  
6 open-space aspects of the site.

7 MR. OTTEN: But the NCRC --

8 MAYOR'S AGENT BYRNE: I just ruled.

9 MR. OTTEN: Can I clarify my position?

10 MAYOR'S AGENT BYRNE: Nope. You can go  
11 on to another question.

12 MR. OTTEN: That's ridiculous.

13 MAYOR'S AGENT BYRNE: Well --

14 MR. OTTEN: The NCRC document is what set  
15 this project into motion.

16 MAYOR'S AGENT BYRNE: It doesn't matter.

17 MR. OTTEN: It doesn't talk about  
18 subdividing the land this way. It talks about  
19 subdividing it in different ways.

20 MAYOR'S AGENT BYRNE: Well, all right.

21 Let me look. It talks about -- and what would be  
22 the relevance? So --

1           MR. OTTEN: It talks about retaining  
2 public ownership. It talks about the open,  
3 contiguous components of this land, as --

4           MS. BROWN: Could you point to that,  
5 then?

6           MAYOR'S AGENT BYRNE: Where are you  
7 looking in the document?

8           MS. BROWN: It's not up to -- you're  
9 making the assertion.

10          MR. OTTEN: It's a powerful document.  
11 Maybe you should take time to read it.

12          MAYOR'S AGENT BYRNE: That's not -- if  
13 you can point to some part of the document that  
14 goes specifically to the question of subdivision,  
15 I will reconsider my ruling.

16          (Pause, the parties perused the  
17 document.)

18          MR. OTTEN: It specifically talks, on  
19 page 8, about the revitalization goals that was  
20 created by the community, which includes the open  
21 space.

22          (Pause, the parties perused the

1 document.)

2 MAYOR'S AGENT BYRNE: Page 11 shows  
3 possible subdivision, as does -- so, all right.

4 I'm going to let it in for the purpose of  
5 showing earlier concepts of how the site might be  
6 subdivided, for that limited purpose.

7 MS. FERSTER: We have actually a better  
8 copy here.

9 MR. OTTEN: Also, on page 22, it has a  
10 very clear picture of the current site.

11 MAYOR'S AGENT BYRNE: Well, we don't need  
12 that.

13 MR. OTTEN: As an open, contiguous space.

14 MAYOR'S AGENT BYRNE: We don't need that.

15 MS. BROWN: So we're looking only at  
16 pages 9 and 11 as being relevant to the  
17 proceeding?

18 MR. OTTEN: No. I want to use the whole  
19 document.

20 MAYOR'S AGENT BYRNE: Well, I'm letting  
21 it in for the limited purpose of showing earlier  
22 concepts of how to subdivide the property, and

1 that's the only basis.

2 MR. OTTEN: Well, and the land-use  
3 planning on page 22 goes into significant open  
4 space. It talks about the view sheds. It talks  
5 about --

6 MS. BROWN: The only -- but I would  
7 object --

8 MS. FERSTER: The entire document is in,  
9 correct?

10 MS. BROWN: No. I would object because  
11 it's only for the relevancy of page 11.

12 MS. FERSTER: I think without the entire  
13 document, you lose the context.

14 MAYOR'S AGENT BYRNE: I can put it in for  
15 the limited purpose of showing earlier  
16 subdivision proposals, right? And that's what  
17 it's in for.

18 (Cross-talk.)

19 MS. FERSTER: Right. But the whole  
20 document --

21 MS. BROWN: But then anything else cannot  
22 be argued on --



1           MS. FERSTER: Oh, we're going to argue  
2 everything on appeal, I assure you. But we want  
3 the entire document for the context.

4           MS. BROWN: Then this document needs to  
5 be excluded.

6           MAYOR'S AGENT BYRNE: Tell me why.

7           MS. BROWN: It's completely irrelevant to  
8 the case before the Mayor's Agent today.

9           MAYOR'S AGENT BYRNE: So, and what's your  
10 concern? What is the harm of putting it in?  
11 Let's assume that most of the document is  
12 irrelevant to the issue I'm going to decide. But  
13 some little bit is relevant. I mean, in what way  
14 are you harmed by that?

15          MS. BROWN: We haven't even heard why  
16 it's relevant because there is no testimony that  
17 supports it. You already ruled that this goes  
18 beyond -- we didn't have any oral testimony to it  
19 because it was irrelevant. And now we're trying  
20 to do it back-door, get a written document in  
21 that you specifically excluded. And what  
22 relevance does this illustration-purposes-only

1 chart have for the proceeding?

2 MS. FERSTER: I mean, you know, if you're  
3 going to allow two pages of this document in on  
4 relevance ground, you have to allow the entire  
5 one. Just as you objected to the pieces of the  
6 transcript from the prior hearing that Ms. Sellin  
7 quoted --

8 MS. BROWN: I didn't make an objection.  
9 I just went to the accuracy of it.

10 MS. FERSTER: -- because of the -- you  
11 know, without the full context. So, you know, if  
12 two pages of this document are relevant to the  
13 Mayor's Agent, then the whole document should be  
14 in the record. And certainly, you know, you can  
15 focus on what you believe is relevant and what  
16 you believe isn't relevant in your decision.

17 MAYOR'S AGENT BYRNE: So, is your concern  
18 that it opens up other arguments to the court of  
19 appeals?

20 MS. BROWN: Absolutely. Yes.

21 MS. FERSTER: Well, those arguments are  
22 open. They're wide open. We're going to argue

1 everything -- you know, everything that we think  
2 is relevant. You can't stop us from arguing  
3 anything. So --

4 MS. BROWN: The court of appeals can.

5 MAYOR'S AGENT BYRNE: But I mean, it  
6 doesn't matter, to some extent, what's in the  
7 record.

8 I'll tell you what I'm going to do. I'm  
9 going to take this document under submission so I  
10 can examine it at greater length. And I will  
11 determine in the course of issuing the opinion  
12 whether it's part of the record or not.

13 And that is, for the purposes of the  
14 transcript, this is the NCRC McMillan Sand  
15 Filtration Site -- what do they call it? --  
16 solicitation.

17 MS. FERSTER: And, you know, even to  
18 understand, I would just say that --

19 MAYOR'S AGENT BYRNE: Solicitation of  
20 2006.

21 MS. FERSTER: -- to understand the  
22 context of the two pages that you have ruled that

1 are allowed in the record, you need to include  
2 the whole document. Otherwise --

3 MAYOR'S AGENT BYRNE: You're made your --  
4 I've heard all the arguments. And I'm reserving  
5 the decision of the question.

6 MS. FERSTER: Okay. We have one more set  
7 of -- well, we have some -- the National Trust  
8 has some documents. But we move that you include  
9 -- and you've already ruled on the first document  
10 and allowed that in the record. But we move that  
11 the following documents from the prior hearing on  
12 the below-ground vaults be included into the  
13 record in this proceeding.

14 MS. BROWN: I object.

15 MAYOR'S AGENT BYRNE: What is the virtue  
16 of that? Why should I do that, Ms. Ferster?

17 MS. FERSTER: Well, as --

18 (Cross-talk.)

19 MAYOR'S AGENT BYRNE: Since I've already  
20 ruled on the question of special merit --

21 MS. FERSTER: Indeed. So we are, of  
22 course, assuming that, as you have indicated that

1 you were going to -- you seem to have indicated  
2 that you were going to approve this application.  
3 So, under the assumption -- perhaps you haven't.  
4 Perhaps you reserved judgment.

5 But if you do approve the subdivision  
6 application based on the limited grounds that  
7 you've allowed testimony in this case, obviously  
8 we have made a legal position in this case that  
9 we believe that the Mayor's Agent has an  
10 obligation to consider the cumulative impact of  
11 the project as a whole, not to bifurcate the  
12 proceedings, but to do it as a whole in order to  
13 be able to make the determinations that you've  
14 made that the balance of the loss of all of the  
15 important supporting and key historic  
16 characteristics of this site is justified based  
17 on the special merit that was submitted in the  
18 last hearing.

19 And so, the record that goes up on  
20 appeal, we think, should include the objections  
21 and the testimony that we submitted at the last  
22 hearing. Although you have not allowed us to

1 repeat it at this hearing, we think it should be  
2 part of the record that goes up.

3 MAYOR'S AGENT BYRNE: Any objections?

4 MS. BROWN: Yes, I do.

5 MAYOR'S AGENT BYRNE: Okay. So, I think  
6 that -- I think that if you were going to make  
7 that argument to the court of appeals, you'd have  
8 to appeal from both orders.

9 MS. FERSTER: Well, yes. And we have  
10 already filed our appeal from the first order.

11 MAYOR'S AGENT BYRNE: Yes. So then  
12 there's no reason to put this in the record of  
13 this hearing.

14 MS. FERSTER: But they are separate.  
15 Unless we consolidate them, which depends on the  
16 timing of your decision, they will have separate  
17 records.

18 (Pause.)

19 MS. BROWN: Mr. Byrne, if you accept  
20 limited documents without the full context of the  
21 entire record, so either the entire record goes  
22 in or we just --

1 MAYOR'S AGENT BYRNE: Right.

2 (Cross-talk.)

3 MS. FERSTER: We would --

4 MS. BROWN: But I think it's much cleaner  
5 and better to just limit it to what the issue is  
6 before the Mayor's Agent, which is the  
7 subdivision. And, you know, we're just opening  
8 up Pandora's box here, throwing everything and  
9 the kitchen sink into this proceeding, which is  
10 completely irrelevant. It either stands on its  
11 own or it doesn't.

12 MAYOR'S AGENT BYRNE: Yeah.

13 MS. FERSTER: And I would just simply  
14 point out that your argument about -- we would  
15 certainly agree that it's appropriate to include  
16 the entire record, which would include all of  
17 your witnesses and all their testimony into the  
18 record.

19 But since you elected, as you are  
20 entitled to elect, not to proceed to put those  
21 witnesses on the stand or include those portions  
22 of the record in the record, we assumed that you

1 did not want them in the record for purposes of  
2 appeal.

3 So we're simply including the portions of  
4 our witnesses and their testimony, which would  
5 include your cross examination.

6 MS. BROWN: Well, no. You've got the  
7 report of --

8 MS. FERSTER: Let me finish.

9 MS. BROWN: DDOT here.

10 MS. FERSTER: Which is one of our  
11 exhibits.

12 (Cross-talk.)

13 MS. BROWN: Right. It was one of the  
14 ones that carved out just four pages of the DDOT  
15 report to support your particular position.

16 MS. FERSTER: That's right, but --

17 MS. BROWN: So it's incomplete.

18 MS. FERSTER: It would be -- the Mayor's  
19 Agent's allowed it in because the whole report  
20 was online.

21 MS. BROWN: Actually, if you recall, the  
22 DDOT testimony was all excluded because traffic



1 and transportation issues, he determined, were  
2 not relevant.

3 MS. FERSTER: I think that DDOT testimony  
4 went in. But if it's not in the record of the  
5 prior proceeding, we don't believe --

6 MS. BROWN: I think we're demonstrating  
7 why this Pandora's box should not be opened.

8 MAYOR'S AGENT BYRNE: Yeah. So, I mean,  
9 it really seems, for purposes of people here who  
10 are not lawyers, this is all awful. This is all  
11 what lawyers do.

12 MALE VOICE: Praise the Lord!

13 (Laughter.)

14 MAYOR'S AGENT BYRNE: Right. I think  
15 that -- so, I don't think it -- so, I don't  
16 believe that it matters. So I do think that if  
17 we let these things in, it makes more sense to  
18 allow the whole record from the prior case to be  
19 part of the record of this case. Because that  
20 was all vetted in a different context.

21 I don't think it really matters because  
22 if I'm wrong about the way I've developed the

1 scope of this hearing, then the court of appeals  
2 is going to have to send the case back anyway.  
3 They're just not going to be capable of just  
4 going ahead and making a decision about the  
5 special merit; that's just not what they do. So,  
6 I don't think it really matters one way or  
7 another.

8 I do think it's fairer to either let it  
9 all in and not go through these particular  
10 documents that Ms. Ferster wants to put in. Then  
11 I'd have to give you a chance to put all the  
12 documents in. We'd be here all day.

13 What do you think of that?

14 MS. BROWN: I think it's cleaner just to  
15 leave everything out.

16 MAYOR'S AGENT BYRNE: Well, it's either  
17 all in or all out. And my inclination is to say,  
18 for purposes, we'll put it all in and make the  
19 whole record of the prior decision part of the  
20 record of this case on the understanding that --  
21 I mean, I've ruled it like five times. I  
22 couldn't be any clearer about what I believe to

1 be the scope of this hearing. And I'm going to  
2 abide by that.

3 And therefore, in reaching my decision,  
4 I'm going to look at only those materials in the  
5 record that are relevant to the issue as I've  
6 defined it. So, I think that's the ruling. I  
7 think it's the most expeditious ruling.

8 MS. BROWN: So --

9 MS. FERSTER: The whole record. We  
10 support that.

11 MS. BROWN: So, who's going to deliver  
12 that?

13 MS. FERSTER: The District of Columbia.

14 MS. BROWN: No, I think you should since  
15 you proffered it.

16 MS. FERSTER: I don't have the whole  
17 record of the case.

18 MAYOR'S AGENT BYRNE: It's all gone to  
19 the court of appeals.

20 MS. FERSTER: Then I would ask the  
21 Mayor's Agent to relieve the parties of the  
22 obligation of recopying probably onward 1,000 of

1 documents that already is going to the court of  
2 appeals anyway, and providing it to the  
3 Applicant.

4 MS. BROWN: If it's in the record, then  
5 you'd better provide me a copy of it.

6 MS. FERSTER: We don't even have it at  
7 this point.

8 MAYOR'S AGENT BYRNE: No, I know. Nobody  
9 has it.

10 MS. BROWN: Well, you'd better go up to  
11 the court of appeals and get a copy.

12 MS. FERSTER: When you are appointed  
13 Mayor's Agent, then you can tell me to go up to  
14 the court of appeals.

15 (Laughter.)

16 MS. BROWN: You are bringing them to the  
17 record, then you have to put it in. It's part of  
18 your case.

19 MR. OTTEN: When the joint appendix is  
20 built, we can do that.

21 MAYOR'S AGENT BYRNE: I don't know. I  
22 mean, I don't want to --

1 MS. FERSTER: I mean, let me just say --  
2 (Cross-talk.)

3 MAYOR'S AGENT BYRNE: I don't want to put  
4 the burden on you of copying the whole.

5 MS. FERSTER: Thank you. And let's all  
6 set the record straight here. We have Holland  
7 and Knight billing collectively \$1,000 an hour --  
8 (Cross-talk.)

9 MAYOR'S AGENT BYRNE: Okay. Now, come  
10 on, come on.

11 MS. FERSTER: Being paid for by the  
12 District of Columbia, and they are asking Friends  
13 of McMillan Park to pay for the copying costs of  
14 the administrative record in this case. And  
15 it's, quite frankly, outrageous.

16 MR. OTTEN: Um-hm.

17 MAYOR'S AGENT BYRNE: Well, I think  
18 that's slightly demagogic, actually.

19 MS. FERSTER: Well, it's not as  
20 demagoguery as the request; let me say.

21 MAYOR'S AGENT BYRNE: Well, I think that  
22 she as a lawyer is entitled to make that request.

1 It's not my -- but I'm not going to require you  
2 to do that.

3 But then the question, how do I manage  
4 this?

5 MS. BROWN: And I guess the other  
6 question, too, is we need a complete listing of  
7 every document that's in the record and who -- at  
8 the very least, you should be able to supply  
9 that.

10 MS. FERSTER: That should be in the  
11 record. Before the District of Columbia's  
12 submitting to the D.C. Court of Appeals, they  
13 typically would have an index. So I would hope  
14 they would have an index of all the exhibits.

15 MS. BROWN: And as the one proffering it  
16 and as the one that made the appeal, you should  
17 have it.

18 MS. FERSTER: And again, I asked the  
19 Mayor's Agent to relieve a nonprofit shoestring  
20 operation from the burden of having to copy the  
21 entire administrative record --

22 MS. BROWN: Ms. Ferster, you're getting

1 paid, aren't you?

2 MAYOR'S AGENT BYRNE: Well, we've already  
3 covered that.

4 Is there a listing of the documents that  
5 went to the court of appeals, Tim?

6 MR. DENNEE: We haven't sent it yet. We  
7 haven't gotten an order to send it.

8 MAYOR'S AGENT BYRNE: I still have it.

9 MR. DENNEE: For the record, I'm the one  
10 who puts together the record. And I am seldom  
11 told of it for months. And I have to do it very  
12 quickly at the end. So, I appreciate the  
13 nonprofit's point of view.

14 My point of view is I'm the one who  
15 prepares all this stuff and copies it and scans  
16 it and creates the index and does the  
17 certification. So, to the extent possible, I  
18 would like to be relieved of the burden of that.

19 (Laughter.)

20 MR. DENNEE: I mean, things that are  
21 redundant or are already in the record.

22 MAYOR'S AGENT BYRNE: Well, can we simply

1 stipulate that the materials from the prior case  
2 are in the record?

3 MR. DENNEE: Yeah, I suppose. I mean, if  
4 by then I've already compiled them, then I  
5 suppose I could add another pdf.

6 MAYOR'S AGENT BYRNE: As far as the court  
7 of appeals is concerned, that should be adequate.

8 MR. DENNEE: And on that note, to the  
9 extent that any exhibits are accepted today or  
10 have been accepted, if we could identify them in  
11 some fashion for further reference in this case  
12 and for the purpose of me organizing them and  
13 where you're going to find them for the court?

14 MAYOR'S AGENT BYRNE: Yes. We will do  
15 that.

16 MS. FERSTER: We would stipulate that.

17 MS. BROWN: And I still have an issue,  
18 because I don't know that I have all the  
19 documents from the first Mayor's Agent hearing,  
20 because the people who were submitting copies of  
21 testimony and items that they were not giving  
22 copies to me of -- so that's why we need, at the



1 very least, a complete, comprehensive list of all  
2 the exhibits.

3 MAYOR'S AGENT BYRNE: When would you --  
4 so you do an index to the exhibits from the first  
5 case, yes?

6 MR. DENNEE: I would, yes.

7 MAYOR'S AGENT BYRNE: Okay. And you  
8 haven't done that yet?

9 MR. DENNEE: I have not received any  
10 notification that there's an appeal, request for  
11 the record, anything of that sort. As I say,  
12 OAG, if they get such paperwork, don't forward it  
13 to me. And I usually find out by a call or email  
14 some months later, saying, "Hey, the record is  
15 overdue." That happened in the most recent case  
16 which I just spent two weekend days putting  
17 together.

18 MS. FERSTER: You should have been served  
19 with a copy.

20 MR. OTTEN: Mr. Byrne, I'm confused. The  
21 first case by which you issued your order, by  
22 which there's a record, I'm hearing today from

1 the person who manages the record that it's not  
2 been compiled yet in a list fashion. I mean, is  
3 that true?

4 MR. DENNEE: Let me clarify. I don't  
5 manage the record. When a court asks the agency  
6 for a record, then I have to get it. If the  
7 Mayor's Agent still has it, I retrieve it. I try  
8 to organize it the best I can, based on how it's  
9 marked and how -- and I have to go back into the  
10 transcript and figure things out, try to organize  
11 them, describe them, and index them.

12 MAYOR'S AGENT BYRNE: Yep.

13 MR. DENNEE: Now, whether that's my  
14 actual job or responsibility, I cannot say. But  
15 it has fallen to me.

16 MS. FERSTER: I believe we did serve you  
17 with a copy of -- or the Director of the Office  
18 of Planning, your co-signer of the opinion, with  
19 a copy of our notice of appeal.

20 MAYOR'S AGENT BYRNE: I accept that; I  
21 haven't seen it.

22 MR. OTTEN: I'm still confused. Where is

1 the record located from the last hearing?

2 MAYOR'S AGENT BYRNE: It's right now in  
3 the HPO office.

4 MR. OTTEN: It's in the HPO office. And  
5 shouldn't that be compiled and indexed already so  
6 that, I mean, your decision that's based on this  
7 record is all together as a package?

8 MAYOR'S AGENT BYRNE: It will be  
9 eventually, but --

10 MR. OTTEN: Isn't that a standard  
11 procedure?

12 MR. DENNEE: No, no, no.

13 MAYOR'S AGENT BYRNE: It will be  
14 eventually, but --

15 MR. OTTEN: I mean, whether the court  
16 asks or not --

17 MR. DENNEE: No.

18 MAYOR'S AGENT BYRNE: No, no.

19 MR. OTTEN: It's not?

20 MAYOR'S AGENT BYRNE: It's not. It's not  
21 standard procedure.

22 MR. DENNEE: There is no requirement to

1 do so. And why would I spend the enormous amount  
2 of staff time that I do on these things when a  
3 court requires it if it's not required by the  
4 court?

5 MAYOR'S AGENT BYRNE: So we're not going  
6 there right now. So --

7 MR. OTTEN: It doesn't make any sense.  
8 This is a public proceeding. I figured every  
9 record should be indexed.

10 MS. FERSTER: It will --

11 MAYOR'S AGENT BYRNE: Don't worry about  
12 it.

13 (Pause.)

14 MAYOR'S AGENT BYRNE: Okay. There is --  
15 so I'm aware of the administrative burden  
16 involved in this. And I'm being made aware of  
17 the administrative burden involved in this.

18 I don't -- so, putting -- so, the problem  
19 of making the entire record from the prior  
20 hearing part of the record of this hearing is  
21 greater than I had appreciated, in practical  
22 terms. And I don't want to burden either any of

1 the parties or the HPO with excessive paperwork  
2 when my assumption has been that the materials  
3 from the prior proceeding are essentially  
4 irrelevant to that.

5           So, I'm going to revise my ruling. I'm  
6 going to allow the NCRC document in for the  
7 limited purpose of showing a prior approach to  
8 subdivision. And I'm not going to allow  
9 documents generally from the prior hearing to  
10 come in unless they deal specifically with  
11 subdivision.

12           MS. FERSTER: Can you also add the MAG's  
13 letter?

14           MAYOR'S AGENT BYRNE: The MAG letter?  
15 Yes, I allowed the MAG letter in for purposes of  
16 showing their concern about whether they've been  
17 heard.

18           MR. OTTEN: And, Mr. Byrne, just for the  
19 record, if and when both cases do get to the  
20 court of appeals, would you be opposed to request  
21 the court to consolidate those records?

22           MAYOR'S AGENT BYRNE: I will have no say

1 on that question.

2 MS. FERSTER: Well, your lawyer --

3 MAYOR'S AGENT BYRNE: He's not my lawyer.

4 MS. FERSTER: Well, the Office of  
5 Attorney General will be your lawyer.

6 MAYOR'S AGENT BYRNE: Won't be my lawyer.

7 MS. BROWN: I object that we're even  
8 having a discussion about what's --

9 (Cross-talk.)

10 MAYOR'S AGENT BYRNE: Fair enough. Yeah,  
11 fair enough.

12 MS. BROWN: -- court of appeals.

13 MAYOR'S AGENT BYRNE: Fair enough.

14 MR. OTTEN: Well, it's been brought up a  
15 bunch of times.

16 MAYOR'S AGENT BYRNE: It has been, and  
17 maybe that's inappropriate. But I have no say on  
18 that question.

19 MS. FERSTER: But just for the record,  
20 you will be represented by the Office of Attorney  
21 General, because you are named as the Respondent  
22 in the case. So presumably --

1 MAYOR'S AGENT BYRNE: I am?

2 MS. FERSTER: Yes, you are.

3 MAYOR'S AGENT BYRNE: Personally?

4 MS. FERSTER: The Mayor's Agent is named.  
5 (Laughter.)

6 MS. FERSTER: The Office of Attorney  
7 General will agree to represent you, not required  
8 --

9 MAYOR'S AGENT BYRNE: But only in my  
10 official capacity.

11 (Cross-talk.)

12 (Laughter.)

13 MAYOR'S AGENT BYRNE: I'm not going to  
14 rule on -- I don't think I have any say about  
15 that. I don't think I have any say about that.

16 Okay. Do you have more documents, Ms.  
17 Merritt?

18 MS. MERRITT: Is there anything else on  
19 you that we need to do?

20 MS. FERSTER: He's ruled that none of  
21 this can come in except for the EHT Traceries  
22 report, which you did allow.

1           MAYOR'S AGENT BYRNE: Yes, I allowed that  
2 in re, yes.

3           MS. FERSTER: And so --

4           MS. MERRITT: Did you go through the  
5 trust documents?

6           MS. FERSTER: Well, a lot of these  
7 documents are from the prior hearing.

8           MS. MERRITT: That's right.

9           MS. FERSTER: But it's the one, the land  
10 disposition agreement document I think is the  
11 only one that's not been a prior.

12          MS. MERRITT: Okay.

13          MS. FERSTER: And the National Trust has  
14 copies of a number of the documents that are  
15 listed in this exhibit list from the prior  
16 hearing.

17          MS. MERRITT: So, one category of  
18 documents that we brought that we wanted to  
19 proffer are documents from the City Council  
20 resolutions that are all public documents.  
21 They're all online. They're all sort of citable  
22 public documents. We were going to offer them as



1 a matter of convenience for the record. But if  
2 our understanding of your ruling is you don't  
3 want any of that stuff in the record, is that  
4 correct? Or --

5 MAYOR'S AGENT BYRNE: So, from the  
6 disposition agreements? I mean, would you object  
7 to the documents relating to the City -- the  
8 public documents relating to the City Council's  
9 disposition?

10 MS. BROWN: Again, I don't know that  
11 they're relevant.

12 MAYOR'S AGENT BYRNE: Well, I understand  
13 that. But I'm asking you if you would object to  
14 them.

15 MS. MERRITT: Here's what we're talking  
16 about. These -- this kind of -- one of --  
17 actually, one of the things in that stack is the  
18 Valbridge report. It's the revolutions -- it's  
19 not this.

20 (Cross-talk.)

21 MS. BROWN: No, it's just not relevant.

22 MAYOR'S AGENT BYRNE: And what's the

1 relevance of it?

2 MS. BROWN: Yeah.

3 MAYOR'S AGENT BYRNE: Thank you.

4 MS. MERRITT: Well, we -- I mean, we just  
5 -- I was sort of offering these as a matter of  
6 convenience to the extent that we may want to  
7 cite to, you know, what the City Council did or,  
8 you know --

9 MAYOR'S AGENT BYRNE: That was a whole  
10 bunch of emails and things. You know, I'm not  
11 going to allow that.

12 MS. MERRITT: Okay. This was just as a  
13 matter of convenience.

14 MAYOR'S AGENT BYRNE: No, I appreciate  
15 that.

16 MS. MERRITT: They're public documents  
17 anyway.

18 MAYOR'S AGENT BYRNE: Thank you.

19 MS. MERRITT: Okay. Then, we also have  
20 this letter, which was submitted as part of the  
21 record in previous Mayor's Agent's hearing.

22 MS. BROWN: Yeah. I object to this one

1 as well. It's irrelevant.

2 MS. MERRITT: And we believe it's  
3 relevant because it goes to our argument that  
4 less-intensive development, that development this  
5 intensive is not necessary to achieve the project  
6 of special merit.

7 MS. BROWN: And I happened to speak to  
8 the writer of this letter afterwards. And he was  
9 not even aware of half the elements --

10 (Laughter.)

11 MS. FERSTER: Excuse me. Excuse me.

12 MAYOR'S AGENT BYRNE: That's all right.  
13 We will exclude that.

14 MS. FERSTER: Move to strike.

15 MAYOR'S AGENT BYRNE: We'll exclude that  
16 from the evidence there as hearsay.

17 (Laughter.)

18 MAYOR'S AGENT BYRNE: But, no. I'm not  
19 going to allow that because it really goes to  
20 what I've decided already.

21 MS. FERSTER: Okay. So he's already --

22 MS. MERRITT: Is this on your other list?

1 MS. FERSTER: That was on this list.

2 MS. MERRITT: The 2002 summary --

3 MS. FERSTER: Yeah, that was on the list  
4 there.

5 MS. MERRITT: -- of recommendations for  
6 site revitalization?

7 MS. FERSTER: Yeah. I think that was on  
8 his list.

9 MS. MERRITT: That's been rejected?

10 MS. FERSTER: Um-hm.

11 MS. MERRITT: And let's see what else we  
12 have.

13 MS. FERSTER: Oh, the articles.

14 MS. MERRITT: The news articles. Let's  
15 see, one, two, three -- sorry. Four.

16 (Pause.)

17 MS. MERRITT: There's a set of four news  
18 articles by the reporter who was here earlier,  
19 who's not here anymore. These are the ones we're  
20 talking about. Again, I would put in those.

21 MAYOR'S AGENT BYRNE: No. I'm not going  
22 to let those in the record.

1 MS. MERRITT: Okay. Then --

2 MS. FERSTER: Then the fourth one next?

3 MAYOR'S AGENT BYRNE: I read them in the  
4 paper, if that's any help.

5 MS. MERRITT: And then the MAG letter  
6 from September 11th, 2014, Matthew Bader. This  
7 document?

8 MS. BROWN: Are those ones that have been  
9 rejected already?

10 MAYOR'S AGENT BYRNE: Yeah, these are the  
11 ones that are rejected.

12 MS. BROWN: So I don't know why she's  
13 handing them to you.

14 MS. MERRITT: She's asking the previous  
15 --

16 MAYOR'S AGENT BYRNE: They're just trying  
17 to --

18 MS. MERRITT: Just so you see what I'm  
19 talking about.

20 MAYOR'S AGENT BYRNE: She's trying to get  
21 this done.

22 MS. MERRITT: This is the one. Is that

1 from the previous record?

2 MS. BROWN: That is what the --

3 MS. FERSTER: It was part of the previous  
4 record.

5 MS. MERRITT: Okay.

6 MS. BROWN: But that's out.

7 MAYOR'S AGENT BYRNE: So, on the  
8 September 11th, I'm not going to allow in just  
9 based on the subject line.

10 MS. MERRITT: Okay.

11 MAYOR'S AGENT BYRNE: Denying that it  
12 constitutes a project of special merit.

13 MS. FERSTER: And then, that's part of  
14 the previous record as well.

15 MS. MERRITT: That's part of the previous  
16 record.

17 MS. MERRITT: Okay. And let me see.  
18 There's one more, one more thing. This document  
19 --

20 MS. BROWN: It's part of the previous  
21 record.

22 MAYOR'S AGENT BYRNE: Part of the

1 previous document?

2 MS. FERSTER: It should be. Chris  
3 [inaudible] charts.

4 MS. BROWN: Yeah. And then the rest of  
5 this is all either the City Council resolutions  
6 or part of the previous record.

7 MAYOR'S AGENT BYRNE: All right. Let's  
8 get some of this sorted out here.

9 MS. BROWN: So that goes into the --  
10 after --

11 (Pause, an inaudible conversation ensued  
12 regarding the documents.)

13 MAYOR'S AGENT BYRNE: Okay, are we done  
14 with -- any more?

15 MS. BROWN: I'm not sure what happened  
16 with this.

17 MAYOR'S AGENT BYRNE: That was part of  
18 the September 11th submission which I rejected.

19 MS. BROWN: Okay. So it's rejected.

20 MS. FERSTER: Yeah. It was part of the  
21 record in the vaults, the case on the demolition  
22 of the vaults.

1           MAYOR'S AGENT BYRNE: I'm going to try to  
2 go over what we have here so that we are all a  
3 little clearer on what's in.

4           So, we're going to call Exhibit A the  
5 request for subdivision documents that Mr. Dennee  
6 photocopied from us earlier from the Office of  
7 Surveyor.

8           (Opposition A was marked for  
9 identification.)

10          MAYOR'S AGENT BYRNE: Exhibit B is the  
11 written testimony of Ms. Sellin.

12          (Opposition Exhibit B was marked for  
13 identification.)

14          MS. BROWN: If I could interrupt for just  
15 -- I'm sorry. We have the slide show that we  
16 presented at the first, so I don't know if,  
17 sequentially, that should be B.

18          MS. FERSTER: Well, you can just call  
19 them Opposition Exhibit A.

20          MAYOR'S AGENT BYRNE: Opposition  
21 Exhibits; thank you.

22          MS. BROWN: Opposition B?



1           MAYOR'S AGENT BYRNE:  Opposition Exhibit  
2  A is the request for subdivision to the Surveyor?

3           MS. BROWN:  That's opposition?  Sir, it's  
4  part of the record.

5           MS. FERSTER:  Well, we put it in.  I  
6  mean, you didn't -- the District of Columbia  
7  didn't have a witness.  So I guess we put it in  
8  the record.

9           MS. BROWN:  It's part of the record.

10          MAYOR'S AGENT BYRNE:  It's part of the  
11  record.

12          MS. BROWN:  Right.  So I don't know that  
13  it's Opposition -- it's the application that got  
14  us here.

15          MAYOR'S AGENT BYRNE:  How do you suggest  
16  I label it?

17          MS. BROWN:  (Laughing)  I don't know.  I  
18  would suggest having just A through -- and maybe  
19  we don't bother with sequentially how it was  
20  submitted to the record, and just go through  
21  these, you know, backtrack and get the others.

22          MAYOR'S AGENT BYRNE:  Okay.

1 MS. BROWN: I apologize for --

2 (Cross-talk.)

3 MAYOR'S AGENT BYRNE: That's fine. I  
4 know. We're all trying. We're all struggling  
5 here to have a coherent record.

6 MS. BROWN: Um-hm.

7 MAYOR'S AGENT BYRNE: Exhibit A then is  
8 the request for subdivision. Exhibit B is the  
9 testimony of Ms. Sellin. Exhibit C is the  
10 testimony of Mr. Vining. Exhibit D is the  
11 Committee of 100 letter from January 2015.  
12 Exhibit E is the National Trust letter of January  
13 2015. Exhibit F --

14 (Opposition Exhibits C through E were  
15 marked for identification.)

16 MS. BROWN: Sorry.

17 MAYOR'S AGENT BYRNE: Sorry?

18 MS. BROWN: My documents are not in the  
19 same order as yours. And so, would you just kind  
20 of --

21 MAYOR'S AGENT BYRNE: I'd be surprised if  
22 they were.

1 MS. BROWN: So, D is the MAG?

2 MAYOR'S AGENT BYRNE: No, no. Sorry. D  
3 is the Committee of 100, from January.

4 MS. FERSTER: D is Committee of 100?

5 MAYOR'S AGENT BYRNE: Yes.

6 MS. MERRITT: E is National Trust Letter  
7 -- I'm sorry, Committee of --

8 MAYOR'S AGENT BYRNE: D is the Committee  
9 of 100 --

10 MS. BROWN: This letter?

11 MAYOR'S AGENT BYRNE: Yes.

12 MS. BROWN: Is D?

13 MAYOR'S AGENT BYRNE: D. National Trust  
14 letter is E. MAG memo is F.

15 MS. BROWN: March 6th?

16 MAYOR'S AGENT BYRNE: March 6th, right.

17 MS. BROWN: Um-hm.

18 MAYOR'S AGENT BYRNE: And then the NCRC  
19 solicitation is G. And that's it.

20 (Opposition Exhibits F and G were marked  
21 for identification.)

22 MS. FERSTER: And then the EHT report,

1 please?

2 MAYOR'S AGENT BYRNE: The EHT report,  
3 which I don't have a copy of here, although I  
4 have one in my office, is H.

5 MS. BROWN: And then the Applicant's  
6 slide presentation?

7 MAYOR'S AGENT BYRNE: Will be G.

8 MS. BROWN: I'm sorry. I thought G was  
9 the NCRC report.

10 MAYOR'S AGENT BYRNE: Oh, sorry.

11 MS. BROWN: Then H is --

12 MAYOR'S AGENT BYRNE: I. I.

13 MS. BROWN: I, yeah.

14 MS. FERSTER: What is I?

15 MAYOR'S AGENT BYRNE: The slides.

16 MS. BROWN: The Applicant's slide  
17 presentation.

18 MAYOR'S AGENT BYRNE: Applicant's slide  
19 presentation.

20 (Opposition Exhibits H and I were marked  
21 for identification.)

22 MS. BROWN: And we also had, I believe,

1 Mr. Stucker's written testimony.

2 MAYOR'S AGENT BYRNE: Okay. Mr.  
3 Stucker's written testimony, yeah, J. The street  
4 we don't have in Washington. But we have an  
5 Exhibit J.

6 (Opposition Exhibit J was marked for  
7 identification.)

8 MS. MERRITT: Mr. Norman has written  
9 testimony?

10 MS. BROWN: Did Mr. Norman submit, have  
11 any written testimony?

12 MS. FERSTER: I don't believe. I don't  
13 believe he had written testimony, did he?

14 MAYOR'S AGENT BYRNE: He didn't give it  
15 to me.

16 MS. BROWN: Okay. That's fine.

17 MAYOR'S AGENT BYRNE: All right. Does  
18 that cover the waterfront?

19 MS. FERSTER: Well, I understand that Mr.  
20 Otten may have some exhibits.

21 MAYOR'S AGENT BYRNE: Oh.

22 MR. OTTEN: Well, I was -- I mean, it's

1 part of my --

2 (Cross-talk.)

3 MAYOR'S AGENT BYRNE: Well, yeah. We'll  
4 wait until we get to his case, all right? Is  
5 that it?

6 MS. MERRITT: Mr. Norman has written  
7 testimony.

8 MAYOR'S AGENT BYRNE: Okay. And that  
9 will be, Mr. Norman's written testimony will be  
10 K.

11 (Opposition Exhibit K was marked for  
12 identification.)

13 MS. BROWN: And I guess just to go over,  
14 picks up -- what about the HPRB report and  
15 transcript from the HPRB proceeding? Will they  
16 need exhibit numbers as part of --

17 MAYOR'S AGENT BYRNE: I don't think they  
18 need exhibit numbers. They're just part of the  
19 record.

20 MS. BROWN: Okay.

21 MAYOR'S AGENT BYRNE: Yeah. Right. All  
22 the documents that led to this proceeding are

1 part of the record as a matter of law.

2 (Cross-talk.)

3 MS. BROWN: Without exhibit numbers.

4 MS. MERRITT: Mr. Norman's testimony is  
5 K?

6 MS. FERSTER: Oh, and you had asked Mr.  
7 Vining -- well, asked him to submit it, or  
8 allowed him to submit the petition. So, but that  
9 presumably will have a later exhibit number?

10 MAYOR'S AGENT BYRNE: Right. The  
11 petition -- thank you. Very good. Right. So  
12 I'd ask Mr. Vining to give us a copy of the  
13 petition that people signed. And when that comes  
14 in, then that will be --

15 MS. BROWN: The last one?

16 MAYOR'S AGENT BYRNE: L. It hasn't come  
17 in yet. It hasn't been submitted yet.

18 MS. BROWN: Okay. All right.

19 MAYOR'S AGENT BYRNE: But I did ask for  
20 that. We'll just call that L so we know that  
21 it's coming and everybody can refer to it that  
22 way.

1 (Pause.)

2 MS. FERSTER: I would ask, just for  
3 purposes of clarity, that this little sheet of  
4 paper that I handed, that I asked -- you know,  
5 that lists the exhibits that I specifically ask  
6 be included in the record, that you ruled would  
7 could not include in the record with the  
8 exception of the VMP, that that just this list be  
9 included in the record as Exhibit M. This list.

10 MS. BROWN: I don't see the need for it  
11 at all.

12 MS. FERSTER: It's just for purposes of  
13 preserving our clarity in organizing the appeal,  
14 to show the documents --

15 MAYOR'S AGENT BYRNE: I'll let it in.  
16 I'll let it in. I guess that will be M, then.

17 (Opposition Exhibit M was marked for  
18 identification.)

19 MS. FERSTER: Um-hm.

20 MAYOR'S AGENT BYRNE: All right. So,  
21 does that conclude your case, Ms. Ferster?

22 MS. FERSTER: I think that's it.



1 Does that cover everything we wanted?

2 (No audible response.)

3 MS. FERSTER: And I had indicated -- you  
4 know what? For purposes of time, I will just  
5 simply defer my written -- my oral summary of our  
6 argument, or closing statement, if you will, to a  
7 written closing statement after the transcripts  
8 are submitted.

9 MAYOR'S AGENT BYRNE: I would invite both  
10 of you to give me --

11 MS. BROWN: All three parties?

12 MAYOR'S AGENT BYRNE: All three parties,  
13 or four parties --

14 MS. BROWN: Four parties, the ANC.

15 MAYOR'S AGENT BYRNE: -- to provide a  
16 short written statement in the nature of a brief  
17 as to how you think the case should be decided.  
18 And in lieu of the post-findings of fact,  
19 conclusions of law, I think given sort of the  
20 nature of this particular inquiry, that that  
21 would be more helpful to me.

22 MS. FERSTER: And then one just minor

1 clarification. On Opposition Exhibit B, written  
2 testimony of Anne Sellin, it should include her  
3 resume.

4 MAYOR'S AGENT BYRNE: Okay. Fine. It  
5 includes her resume.

6 MR. OTTEN: Mr. Byrne, can we make sure  
7 that that submission is due post the -- you know,  
8 with some reasonable time post the public  
9 availability of the transcript?

10 MAYOR'S AGENT BYRNE: Well, that's what  
11 we typically do for proposed findings of fact and  
12 conclusions of law. So I think the answer would  
13 be yes. So, let's say that it will be due two  
14 weeks after the transcript is available.

15 MR. OTTEN: And that will be delivered to  
16 the parties electronically?

17 MAYOR'S AGENT BYRNE: That will be sent  
18 by email to the parties.

19 MR. OTTEN: Okay.

20 MAYOR'S AGENT BYRNE: Yep. So, if you  
21 haven't gotten the transcript from the first  
22 hearing, check with Mr. Dennee and make sure he

1 has your email so he'll make sure that the office  
2 sends it to you.

3 Okay. So then, Ms. Ferster, are you  
4 done?

5 MS. FERSTER: That would conclude our  
6 case.

7 MAYOR'S AGENT BYRNE: And, Ms. Merritt,  
8 do you have anything additionally you want to put  
9 on?

10 MS. MERRITT: No. We'll also defer to  
11 opening submission.

12 MAYOR'S AGENT BYRNE: Okay. Very good.  
13 Mr. Otten, then?

14 MS. FERSTER: Oh, I'm sorry. I have one  
15 more point. And that is that our request for  
16 party status included several exhibits. And  
17 since there was no objection filed by the  
18 Applicant to our written submission, that is part  
19 of the record.

20 MS. BROWN: What is part of the record?

21 MS. FERSTER: In our request for party  
22 status, we included two exhibits. One is George

1 Oberlander's testimony from the prior hearing on  
2 the Comprehensive Plan. Given that your  
3 prehearing statement went into detail on the  
4 Comprehensive Plan issue, we submitted George  
5 Oberlander's testimony on the Comprehensive Plan  
6 issue as part of our findings, our written, our  
7 request for party status.

8 And then, we included a letter from the  
9 National Trust for Historic Preservation.

10 MAYOR'S AGENT BYRNE: About the Lincoln  
11 Cottage, yes.

12 MS. FERSTER: About the Lincoln, but  
13 quite frankly, it's very important for this in  
14 case there's a standing challenge.

15 MAYOR'S AGENT BYRNE: Yeah. Okay.

16 No objection?

17 MS. BROWN: Standing challenge?

18 MS. FERSTER: In case there's a standing  
19 challenge to the National Trust. It certainly  
20 shows one of their concerns that they are --

21 MAYOR'S AGENT BYRNE: Their point of  
22 interest.

1 MS. FERSTER: Their point of interest,  
2 thank you. So we assume that those would be  
3 allowed into the record?

4 MAYOR'S AGENT BYRNE: I think that's  
5 right. Yes.

6 All right. Mr. Otten?

7 MR. OTTEN: Just for clarity's sake, when  
8 do the public witnesses testify?

9 MAYOR'S AGENT BYRNE: They're not.

10 MR. OTTEN: Hm?

11 MS. BROWN: After.

12 MS. FERSTER: After -- after these  
13 parties.

14 MAYOR'S AGENT BYRNE: Oh, you mean -- he  
15 means just the members of the public who want to  
16 testify?

17 MR. OTTEN: Yes.

18 MAYOR'S AGENT BYRNE: I'm sorry. I  
19 thought you meant the public agency folks.

20 MR. OTTEN: Okay.

21 MAYOR'S AGENT BYRNE: Okay.

22 MR. OTTEN: It's after the parties?

1           MAYOR'S AGENT BYRNE: Yes. Anybody --  
2 yes, that's right.  
3 Whereupon,

4                           CHRIS OTTEN  
5 was called as a witness and testified as follows:

6                           DIRECT TESTIMONY

7           MR. OTTEN: Okay. So, I'll just go  
8 through the documents. For the record, my name  
9 is Chris Otten, representing DC for Reasonable  
10 Development, here today.

11                   To put on the record, again we just  
12 finally received the full application that  
13 triggered this proceeding, today. Unfortunately,  
14 Mr. Callcott is not here to answer questions. I  
15 don't believe he's even been to the site, nor Mr.  
16 Stucker of DMPED, as he testified not being aware  
17 of the historic landmark, thorough local  
18 applications, and determination of the narratives  
19 before signing off on the application for this  
20 subdivision, which we just received.

21                   Besides special merit issues and the  
22 Comprehensive Plan issues, the attachments to the

1 application includes the covenants that carry on  
2 with each successor of the site, including D.C.  
3 after the Federal Government, including Vision  
4 McMillan Partners, and anyone thereafter.

5           We heard testimony at the last hearing  
6 from both VMP and Government witnesses that this  
7 is a open, one contiguous lot that is being  
8 proposed to be subdivided, that this subdivision  
9 will lead to the disbursement of what has been  
10 historically public ownership of this land into  
11 private interests.

12           There are other character-defining  
13 aspects that are being altered here besides the  
14 public ownership. We talked about the open  
15 vistas and view sheds, which in the last case  
16 before you really didn't get much review, because  
17 it was about the demolition of the underground  
18 vaults. In fact, it's only mentioned twice in  
19 terms of open space and view sheds in two  
20 sentences in your prior decision.

21           So that's why it's so important in this  
22 case with the subdivision that, as the Applicant

1 says, will carry forward this project. The  
2 impact on the vistas and the view sheds is so  
3 important. Currently, we have open grassland  
4 across 25 acres. With a few -- with the service  
5 courts in there, with their amazing architectural  
6 wonders that exist there, that will be greatly  
7 dwarfed by the proposed project.

8           We heard testimony from VMP and  
9 Government witnesses that the view sheds,  
10 certainly from the north side looking south,  
11 would be blocked by an 115-story office building.  
12 That's a significant impact and alteration to the  
13 historic character of this site.

14           Besides that, it contravenes the  
15 Comprehensive Plan designations, land-use  
16 designations. And just because the Zoning  
17 Commission allowed for that project to contravene  
18 the Comprehensive Plan doesn't mean you, as the  
19 Mayor's Agent, should just go along with it. You  
20 are our independent arbiter here -- we hope.

21           One of the points in the prior decision  
22 talks about parcel 6 and, I guess, describing it



1 as "carefully planned open space." We heard the  
2 testimony that it's really unclear how the D.C.  
3 Water facilities in the northern portion of this  
4 so-called "open public space" will affect that  
5 public space, both in terms of views, in terms of  
6 public access, in terms of use.

7 That current -- that planned space in the  
8 VMP plan is less than a third of the current open  
9 public space. So it's a significant reduction in  
10 the subdivision in the carrying forth of this  
11 project.

12 I want to go through -- and I'll submit  
13 this for the record. It's already on the record.  
14 In Mr. Callcott couldn't conveniently be here  
15 today, in his report dated January 22nd, 2015, he  
16 describes the subdivision, the parceling, and  
17 what's on them, including the medical office  
18 building, as we heard testified, as 115 feet  
19 tall.

20 I wanted to ask him how important he  
21 thought when he was reviewing and preparing this  
22 report, how important the land use designations

1 of the Comprehensive Plan is when he's making  
2 those determinations for HPRB and now your  
3 approval. The Comprehensive Plan is supposed to  
4 guide all decisions here in the District of  
5 Columbia in terms of land use, including this  
6 subdivision.

7           Mr. Callcott, and again in his January  
8 22nd report, claims that the subdivision to  
9 divide a landmark property into multiple lots, as  
10 being proposed, is somewhat less common. And  
11 specifically refers -- he says, "has perhaps the  
12 most similarity with the proposed Tregaron  
13 estate." And he quotes that particular case,  
14 saying that, "The new construction carefully  
15 sited and designated the development there with  
16 the character of the property."

17           When looking at that decision from the  
18 Georgetown Law website, in the summary decision,  
19 it talks about what happened with the Tregaron  
20 estate. It talks about creating eight record  
21 lots on that one contiguous lot for eight single-  
22 family residences.

1           In this case, we heard six parcels with  
2 hundreds of single-family residences, or town  
3 homes and other buildings. In some cases, one of  
4 the parcels with two buildings in the same  
5 subdivision, or subdivided lot.

6           So, really, his presentation of McMillan  
7 being very similar to Tregaron and that's why  
8 it's okay to do this is beginning to show that  
9 it's really not very similar. In fact, the  
10 reason why Tregaron estate was deemed a project  
11 of special merit was because for "the eight  
12 houses on the subdivided lots" -- I'm quoting  
13 right from the summary, from the website, which  
14 I'll submit.

15           "The eight houses on the subdivided lots  
16 was exemplary in terms of its architecture and  
17 land-use planning and 'minimizing the impacts of  
18 those houses on the landscape, ensuring that  
19 houses will be invisible from the most important  
20 vistas and vantage points within the estate and  
21 will respect the important topographical man-made  
22 and natural features and characteristics.'"

1           Clearly, here in this case, it's quite  
2 different than that. Everything is very visible  
3 from any point on the site now, so visible we're  
4 talking, you know, 115 feet up on the north end,  
5 blocking the entire southern projection of our  
6 vista and view shed that we've historically had  
7 as part of the characteristic of this site. That  
8 is a great alteration, or a significant  
9 alteration.

10           And it really, the specific features of  
11 the land planning in the Tregaron case talks  
12 about the limited development of the eight  
13 subdivided lots. As you know, we have 25 acres  
14 here. The vast majority, the super-majority of  
15 these 25 acres will have significant development  
16 on it. So it's interesting that Mr. Callcott  
17 refers to the similarity in the Tregaron estate  
18 one with the McMillan Park, because it shows such  
19 contrast, actually, of what is allowed in terms  
20 of special merit and subdivision.

21           And when you alter such significant  
22 historic characteristics of a site, you really

1 start to begin to challenge the Secretary of  
2 Interior's standards for rehabilitation. And why  
3 is this important? It's important for the exact  
4 same reason why the Applicant included the  
5 covenants in the record with the application.  
6 Because besides special merit and the  
7 Comprehensive Plan, covenants are an important  
8 role in this.

9           And the covenants make it clear that any  
10 and all rehabilitation and renovation work at the  
11 site will be undertaken in accordance with the  
12 Secretary of the Interior's standards for  
13 rehabilitation and guidelines for rehabilitating  
14 historic buildings -- the standards.

15           The standards talk about, very  
16 specifically, minimal change in defining  
17 characteristics of the buildings that are in the  
18 site and the environment, this open contiguous  
19 public land. And that the alteration of features  
20 and spaces that characterize this property shall  
21 be avoided. It doesn't say "may be avoided,"  
22 "could be avoided." It says "shall be avoided."

1           So it's clear that this work and this  
2 subdivision and subsequent to carry out the  
3 project is contravening the standards as found in  
4 the covenants.

5           And that's actually affirmed by Mr.  
6 Callcott in his October 31st, 2013, report, where  
7 he specifically refers, on page 4, "As the  
8 project will result in the substantial demolition  
9 of character-defining features and the  
10 redevelopment will compromise the open-space  
11 quality of the site, the Historic Preservation  
12 Office concludes the project does not meet" --  
13 does not meet -- "the Secretary of Interior's  
14 standards and advises the District to forward the  
15 plans to the Advisory Council for comment."

16           One of the questions I was to have for  
17 Mr. Callcott today was, "How do you forward these  
18 issues to the Advisory Council for comment" as he  
19 said HPRB and HPO should do? We don't believe  
20 that was ever done. But it's clear it's noted  
21 that this project is contravening the standards,  
22 which then contravenes the covenants, which is

1 part of the whole discussion of the subdivision  
2 and to carry out this project.

3           Those historic vistas and open spaces are  
4 again affirmed by the SHPO Director, David  
5 Maloney in the National Register of Historic  
6 Places registration form dated January 4th, 2013,  
7 where consistently, throughout the application,  
8 he refers to "extensive grass-covered flat area  
9 historically spanning the site," "the grassy open  
10 space of the site," talking about the landscaping  
11 aspects, how they were done to "allow for vistas  
12 of the full site, including to the water of the  
13 reservoir and to the south, also to the north."

14           Let's see. Quote-unquote from this  
15 application, "The designation of the Reservoir  
16 and Sand Filtration Site as a publicly accessible  
17 park was a testament to Olmsted and McMillan's  
18 efforts to beautify the nation's capital by  
19 enlarging and enhancing its system of public open  
20 spaces as part of the City Beautiful movement at  
21 the turn of the century."

22           This City Beautiful movement doesn't say

1 anything about 13-story buildings, medical office  
2 buildings. In fact, it would scream out against  
3 that. He talks about "the permanent reserve of  
4 green open spaces serving city residents," "the  
5 natural situation for a series of green open  
6 spaces as part of the Emerald Necklace."

7           This project is destroying that. This  
8 subdivision is destroying this potential vision  
9 and current situation, as related in this  
10 application by Mr. Maloney. The natural  
11 situation for a series of green open space, for  
12 the wonderful vistas, such a height of 40. And  
13 he refers to Mr. Olmsted using smaller plantings  
14 to avoid blocking views into the site.

15           So it is clear throughout many of these  
16 documents that one of the -- several of the  
17 historic character-defining aspects of this site  
18 is its open vistas, contiguous open space, the  
19 scenic views, and the public ownership, which is  
20 going to be jeopardized by this subdivision.

21           And that is also emphasized throughout  
22 Mr. Norman and Ms. Sellin's 1990 application for



1 landmark status, which got approved. Throughout  
2 this whole document, it just talks about the  
3 character-defining aspects -- the open space, the  
4 vistas, the views. That's all going to be  
5 destroyed by this subdivision that carries forth  
6 this project.

7           And really, really, I mean, it's amazing  
8 that -- and I'll put this application on the  
9 record. The people involved in this project,  
10 this park and site, at the turn of the century is  
11 a Who's Who of D.C. history. It really is. And  
12 they're rolling in their graves thinking about  
13 this.

14           (Pause.)

15           MR. OTTEN: Let me just briefly -- I'm  
16 almost finished. On the nps.gov website  
17 discusses the L'Enfant McMillan plans, of which  
18 McMillan Park is part of. It's part of the  
19 Emerald Necklace.

20           And it talks about how 200 years on from  
21 L'Enfant and 100 years on from McMillan, "The  
22 integrity of the plan of Washington," quote-

1 unquote, "is largely unimpaired, boasting a  
2 legally enforced height restriction, landscaped  
3 park, wide avenues, and open space, allowing  
4 intended vistas. Constant vigilance is needed by  
5 agencies responsible for design and review in  
6 their charge to continue the vision of L'Enfant,  
7 and subsequently, of McMillan."

8           We're asking you to do that. I'm also  
9 going to submit a visual of, before the hospital  
10 is rebuilt, the northern part of the -- the  
11 northern service court and the northern section  
12 of the site. And just show you kind of how this  
13 open vista starts to begin.

14           And also highlighted is how there was  
15 clearly public access. And you'll see  
16 highlighted here is a baseball diamond on the  
17 northern part of the site, where people would  
18 play baseball and have access to the site.

19           Two more things, and I'll conclude.  
20 Where is that?

21           (Pause.)

22           MR. OTTEN: Here it is. I'll put this on

1 the record as well. This is a letter from the  
2 National Association for Olmsted Parks, people  
3 who really care about the vision of Olmsted and  
4 his partners. They say that, "The proposed  
5 development plans would destroy the character-  
6 defining visual and spatial relationships that  
7 are central to the original design and intent of  
8 the site."

9           And they refer to the distinctive design.  
10 "It is an element of the McMillan Park system,  
11 the McMillan Park, envisioned a linkage of green  
12 open spaces as part of the Emerald Necklace, and  
13 that the thoughtful reuse of the site can provide  
14 its neighborhoods and the City of Washington with  
15 critically needed public open space and  
16 recreational opportunities." And they ask for a  
17 complete rejection of this plan.

18           So I'll just -- given all of this  
19 information, I'll just conclude by reading a  
20 quote from Frederick Law Olmsted. "The monetary  
21 value attached to any object of beauty, whether  
22 natural or artificial, by public opinion, even by

1 the opinion of the more intelligent part of the  
2 community, is a strangely fluctuating thing. For  
3 how many centuries were the most beautiful  
4 buildings of the classic civilization regarded by  
5 the best minds of Europe as having now value  
6 higher than as stone quarries?

7 "What ruinously wasteful destruction was  
8 committed with the entire self-approbation in the  
9 name of improvement during the period of the  
10 Renaissance upon the wonderful artistic  
11 inheritance from the Gothic period? What  
12 splendid gardens of the Renaissance were  
13 resultantly swept out of existence in the first  
14 flush of the fashion for informal landscape that  
15 came with the growing appreciation of the beauty  
16 of nature in the eighteenth century?

17 "The lesson of history in this respect is  
18 unmistakable. A thing which many people have  
19 held to be of great peculiar beauty and which  
20 cannot be replaced even if the predominant men of  
21 the day fail to appreciate its beauty or are  
22 inclined to think its beauty would be increased

1 by 'improvements' ought not to be destroyed.

2 "These places ought not to be destroyed  
3 or radically altered except under the pressure of  
4 unavoidable necessity or after the most  
5 deliberate searching and humble inquiry as to  
6 whether the predominant opinion of the day is  
7 really right or is perhaps a passing phase  
8 colored by unconscious prejudice."

9 We believe in this case there has been  
10 significant prejudice of a collusion between  
11 private interests and public bureaucrats who are  
12 not looking out for the public interest. We're  
13 asking you to do that. Thank you.

14 MAYOR'S AGENT BYRNE: All right. Very  
15 good. Now, I want to congratulate you on making  
16 a very coherent and effective presentation. I  
17 don't think you were prejudiced at all by not  
18 having Mr. Callcott here. You did a very good  
19 job of talking about the public documents. And  
20 so, I think that was good.

21 MR. OTTEN: I still have significant  
22 questions for him and --

1           MAYOR'S AGENT BYRNE: I understand. I  
2 understand.

3           (Laughter.)

4           MAYOR'S AGENT BYRNE: So, we have  
5 documents then.

6           MR. OTTEN: Yes.

7           MS. FERSTER: And I have a time issue.

8           MAYOR'S AGENT BYRNE: I know you have a  
9 time issue, yes.

10          MR. OTTEN: These are the exhibits I  
11 referenced throughout my presentation.

12          MAYOR'S AGENT BYRNE: Oh.

13          MR. OTTEN: And there's an index.

14          MAYOR'S AGENT BYRNE: All right. Well,  
15 that's very nice. Can we just refer to these  
16 then as the -- you can look at them and object to  
17 any you want. But we're going to just call these  
18 the -- can we call these the Otten documents?

19          MS. FERSTER: I think --

20          MS. BROWN: DC4RD, I think would be fine  
21 the way that's labeled up at the top.

22          MR. OTTEN: Yeah. DC4RD.

1 MAYOR'S AGENT BYRNE: How are they?

2 MS. BROWN: With a double-underline.

3 MAYOR'S AGENT BYRNE: Oh, I see. Okay.

4 DC for Reasonable Development. Excellent. Okay,  
5 great. All right. I'll let you have a chance to  
6 look at that and see if you want to object to any  
7 of them.

8 MR. OTTEN: These are all the documents I  
9 referenced in the presentation.

10 MAYOR'S AGENT BYRNE: I appreciate that.  
11 That's very tidy.

12 So, I guess, while -- I'm going to assume  
13 you don't need to object to these, I assume.

14 MAYOR'S AGENT BYRNE: But can we carry on  
15 then with the public witnesses, with Ms. Merritt  
16 here, if you're not here?

17 MS. FERSTER: Well, I mean, assuming that  
18 -- I don't know what the Applicant has. I don't  
19 know what the parties in support have. So I --

20 MAYOR'S AGENT BYRNE: She had indicated  
21 all along when we set this date that she needed  
22 to go to another thing around 12:30.

1 MS. FERSTER: Yeah. I have to be there  
2 at 1:15, so I have about seven minutes to be  
3 there.

4 MAYOR'S AGENT BYRNE: And that was sort  
5 of set when we established this time, and I  
6 appreciate that. I'm just wondering. So the  
7 question, I guess a question would be -- so we  
8 have to talk about what's going to happen next to  
9 see if we can proceed without Ms. Ferster.

10 MR. OTTEN: Can I get a point of clarity?  
11 When the public witnesses testify, do we as  
12 parties get to ask them questions?

13 MAYOR'S AGENT BYRNE: No.

14 MS. FERSTER: Yes.

15 MAYOR'S AGENT BYRNE: Yes?

16 MS. FERSTER: Yes.

17 MR. OTTEN: I thought that was part of  
18 it.

19 MS. FERSTER: Yes. Yes.

20 MAYOR'S AGENT BYRNE: Well, I've never  
21 had that.

22 MS. FERSTER: Historically, attorneys



1 have been able to cross examine any witness that  
2 testifies.

3 MAYOR'S AGENT BYRNE: That just seems --

4 MS. FERSTER: Let the record reflect that  
5 counsel for the VMP has nodded her head in  
6 agreement.

7 MAYOR'S AGENT BYRNE: Yeah, no. It just  
8 seems, whether she did or not, I don't know; I  
9 didn't see. But it does seem sort of, in many  
10 cases, it seems pointless to do that

11 MS. BROWN: Yes. And I can speak for  
12 myself without you making representations.

13 MS. FERSTER: I just -- I apologize. I  
14 saw you nodding, and I thought you were in  
15 agreement. And okay.

16 So, then, shall we address the -- or have  
17 an argument, discussion about whether or not  
18 there will be cross examination of public  
19 witnesses?

20 MAYOR'S AGENT BYRNE: So, who are the  
21 public witnesses who would like to speak? Okay.  
22 Three, four, five. Five. Okay.

1 MS. BROWN: If I may suggest?

2 MAYOR'S AGENT BYRNE: Please.

3 MS. BROWN: If we could get -- understand  
4 whether they are in support or opposition of the  
5 application?

6 MAYOR'S AGENT BYRNE: Yes. How many of  
7 you -- there are five of you. How many of you  
8 are in opposition to the application?

9 All of them. Um-hm.

10 MS. BROWN: So I wonder if that helps  
11 determine whether or not you need to ask question  
12 of people that are already in opposition.

13 MS. FERSTER: Mr. Otten was the one who  
14 wanted to ask the questions.

15 MS. BROWN: Okay. Sorry.

16 MAYOR'S AGENT BYRNE: Are you, Mr. Otten,  
17 do you need to ask questions of the public  
18 witnesses who are on your side?

19 MR. OTTEN: I think so. Because I don't  
20 know all of them. I don't know what they're  
21 going to present. I may have some clarifying  
22 questions.

1 (Pause.)

2 MAYOR'S AGENT BYRNE: Can that occur  
3 without you here if he's asking clarifying  
4 questions of people who are on your side of the  
5 case?

6 MS. FERSTER: You're going to stay,  
7 right?

8 MS. MERRITT: Yes.

9 MS. FERSTER: That can stay.

10 MAYOR'S AGENT BYRNE: Okay.

11 MS. FERSTER: That can go forward, but  
12 nothing else. I mean, certainly, nothing other  
13 than the people on my side, I'm willing to defer  
14 to my --

15 MAYOR'S AGENT BYRNE: And are you willing  
16 to forgo questioning the public witnesses, who  
17 are basically giving --

18 MS. BROWN: I don't know that we would  
19 have any questions anyway. But if Ms. Merritt's  
20 here, I think that if I had a question, I don't  
21 know that it would be --

22 MAYOR'S AGENT BYRNE: Well, that does

1    seem right.

2               MS. FERSTER:   Right.   No, I'm not saying  
3   that we agree that there would be no cross  
4   examination of the other witnesses.

5               MAYOR'S AGENT BYRNE:   Okay.   Okay.   But  
6   you'll just let Ms. Merritt handle it.

7               MS. FERSTER:   I'm just saying that if  
8   that comes up, let the National Trust handle it.

9               MAYOR'S AGENT BYRNE:   That's good,  
10   because that way, we can conclude the hearing  
11   today and not bring everybody back at  
12   inconvenience and expense.

13              MS. FERSTER:   Yeah.   No, I'm fine with  
14   that.   But I would ask that anything further  
15   beyond the public testimony be deferred until I  
16   return.

17              MS. BROWN:    So are you coming back today?

18              MS. FERSTER:   Yes.

19              MS. BROWN:    Oh, okay.

20              MAYOR'S AGENT BYRNE:   Oh.

21              MS. MERRITT:   What time are you coming  
22   back today?

1 MS. FERSTER: After my meeting, which  
2 would be -- I could get back probably by 2:15.

3 (Chorus of "Oh.")

4 MS. FERSTER: I mean, you know, that's --  
5 I mean, we could defer to another day, too.

6 MS. BROWN: No, no, no. That's great.

7 MS. FERSTER: But I clearly did specify  
8 that I would need to --

9 MAYOR'S AGENT BYRNE: I need to be at a  
10 meeting at three o'clock. But what will  
11 transpire after that? Since we're reserved --  
12 are you expecting to put on a rebuttal of some  
13 sort?

14 MS. BROWN: Whatever rebuttal, I think we  
15 can incorporate into a brief.

16 MAYOR'S AGENT BYRNE: Yes. So --

17 MS. FERSTER: And we have no surrebuttal.

18 MAYOR'S AGENT BYRNE: Okay. So, why  
19 don't we just -- can we --

20 MS. FERSTER: I don't know if Mr. Otten  
21 does.

22 MR. OTTEN: I'm sorry. What's the

1 question?

2 MS. FERSTER: Well, if you have no  
3 rebuttal, he has no surrebuttal, so.

4 MS. BROWN: Yeah.

5 MR. OTTEN: Yeah.

6 MAYOR'S AGENT BYRNE: So, can we then  
7 specify that we will hear from the public  
8 witnesses and then conclude the oral part of the  
9 hearing, allowing each of the parties to submit  
10 briefs on the questions within two weeks after  
11 the second transcript is available, and just sort  
12 of wrap it up today that way?

13 MS. BROWN: Yeah, and if I could just  
14 have a point of clarification. There are some  
15 additional documents that came in during the last  
16 proceeding that we had objected to as coming in  
17 outside the scope of what was allowed.

18 MAYOR'S AGENT BYRNE: During the last  
19 hearing?

20 MS. BROWN: At the last hearing on the  
21 master plan demolition. And I would just hope  
22 that we could set some very narrow parameters

1 about what is expected in our brief and rebuttal  
2 on those documents.

3 MS. FERSTER: Are there going to be  
4 rebuttal documents? Because that's a different  
5 matter.

6 MS. BROWN: That's what I'm asking.

7 MS. FERSTER: I mean, the only document I  
8 understand that's being allowed at this point is  
9 Mr. Vining's petition.

10 MAYOR'S AGENT BYRNE: Yeah. And that's  
11 all, right? Is that okay?

12 MS. BROWN: And that's all. And so, it  
13 would be the brief and nothing -- the petition,  
14 and that's it.

15 MAYOR'S AGENT BYRNE: I think that's  
16 right.

17 MS. BROWN: Okay.

18 MAYOR'S AGENT BYRNE: I mean, I think  
19 that the record is in -- I remember last time  
20 there was some dispute about documents coming in  
21 attached to the proposed findings of fact, we  
22 included a lot. I think we can all agree that we

1 don't need to do that. We won't do that.

2 MS. BROWN: Yeah.

3 MS. FERSTER: Well, if we do that, then  
4 if anybody does it, the other party can file a  
5 motion to strike it. They did before. I mean, I  
6 don't intend to submit any documents.

7 MAYOR'S AGENT BYRNE: Okay.

8 MS. FERSTER: But it might be helpful,  
9 before I leave, if we could just go through Mr.  
10 Otten's documents.

11 MAYOR'S AGENT BYRNE: Yes. And see if  
12 there's any objections to them.

13 MS. FERSTER: Because I would say that we  
14 have no objection to any of these documents. All  
15 of them appear to be very relevant to the  
16 historic significance of the site. And I would  
17 simply say, although there are several documents  
18 relating to the covenants, those covenants are  
19 part of the EHT Traceries report anyway, so  
20 they're already in the record as appendices to  
21 the EHT Traceries report.

22 So I can't see how anybody would have any



1 objection to them also being in the record as  
2 part of Mr. Otten's documents. The remainder of  
3 them appear to be things that are entirely within  
4 the scope of this hearing. The HPRB application  
5 for historic landmark status, the --

6 MS. MERRITT: Staff reports, the HPRB.

7 MS. FERSTER: The summary of the Tregaron  
8 estate, Mayor's Agent decision referencing Mr.  
9 Otten's testimony, the web printout from the  
10 National Park Service site, showing the  
11 descriptions of the L'Enfant and McMillan plans  
12 reference, and then photos that Mr. Otten  
13 referenced in his report.

14 MAYOR'S AGENT BYRNE: So, let's see if  
15 Ms. Brown has any objections then.

16 MS. BROWN: Yes. Many of these are not  
17 relevant, but I don't object to them coming into  
18 the record.

19 MAYOR'S AGENT BYRNE: Right.

20 MS. BROWN: You know, the October 2013  
21 report, that's public record. I don't care about  
22 the Secretary of Interior's standards provided

1 because it's an accurate -- we could somehow  
2 document that this is --

3 MR. OTTEN: I'll attest to the record  
4 that I pulled that from that website that's  
5 listed at the top there.

6 MS. BROWN: Yeah. It doesn't have a  
7 footprint of the website and when it was visited.  
8 So that's my only concern about it. But I think  
9 we all know what the Secretary of Interior's  
10 standards are.

11 MAYOR'S AGENT BYRNE: Yeah. I wouldn't  
12 rely on that without checking.

13 MS. BROWN: Right.

14 MR. OTTEN: Just for the record, I'll say  
15 I printed that out on May 18th or May 17th.

16 MS. BROWN: Same objection, potentially.  
17 We can just check the official record. I don't  
18 know what this document --

19 MAYOR'S AGENT BYRNE: What?

20 MS. BROWN: This document, Exhibit D.

21 MR. OTTEN: Okay.

22 MS. BROWN: It says "225 future land use

1 map and categories." We don't have the source of  
2 this document. I suspect it's from the  
3 Comprehensive Plan?

4 MR. OTTEN: Correct. So I'll attest to  
5 that's a true and correct copy of the  
6 Comprehensive Plan --

7 MAYOR'S AGENT BYRNE: So, I'll say that  
8 on any of these public documents, before I would  
9 rely on any of them, I would go and look at the  
10 official version of them to relieve any concern  
11 about that.

12 MS. BROWN: Right. The covenants, that  
13 the deed was already attached to the application.

14 MAYOR'S AGENT BYRNE: To the application,  
15 right.

16 MS. BROWN: I don't know that it's  
17 relevant, but they're innocuous to have these  
18 other documents in the record.

19 MAYOR'S AGENT BYRNE: All right. Okay.  
20 Very good.

21 (DC4RD Exhibit 1 was marked for  
22 identification.)

1           MAYOR'S AGENT BYRNE: All right. I think  
2 then we're ready, we're going to be ready to hear  
3 from --

4           MS. BROWN: I do have one question for  
5 Mr. Otten from his testimony.

6           MAYOR'S AGENT BYRNE: Well, I consider it  
7 to be legal argument, frankly, rather than  
8 testimony.

9           MS. BROWN: Well, I think we're getting  
10 to that --

11          MAYOR'S AGENT BYRNE: He was never under  
12 oath.

13          MR. OTTEN: I don't mind.

14          MAYOR'S AGENT BYRNE: And I understood  
15 him to be referring to the records.

16          MS. FERSTER: Mr. Otten -- excuse me -- I  
17 believe is testifying also as a witness, aren't  
18 you? Was that an opening statement, or are you  
19 also a witness? Because he's pro se.

20          MAYOR'S AGENT BYRNE: Well, I understand  
21 that, but the nature of what he said --

22          MS. FERSTER: And he's not an attorney.

1           MAYOR'S AGENT BYRNE: I understand that.  
2 I understand that. But, so are you saying that  
3 Ms. Brown should be able to cross examine him?

4           MS. BROWN: Well, I was able to cross  
5 examine Ms. Merritt when she was --

6           MS. FERSTER: Yeah. I think she should  
7 be able to cross examine him.

8           MAYOR'S AGENT BYRNE: All right. Fine.

9           MS. BROWN: When she was both lawyer and  
10 witness.

11          MAYOR'S AGENT BYRNE: Well, that's true.

12          MS. FERSTER: Well, Mr. Otten is not a  
13 lawyer. Let's just say that for the record.

14          MR. OTTEN: I don't object.

15          (Laughter.)

16          MR. OTTEN: I don't object.

17          MAYOR'S AGENT BYRNE: All right.

18          MS. FERSTER: And presumably, he was  
19 sworn in.

20          MAYOR'S AGENT BYRNE: I don't believe he  
21 was.

22          MS. FERSTER: If he was not sworn in, I

1 think he should be sworn in because he is a  
2 witness.

3 MR. OTTEN: I'd be glad to be sworn in.

4 MR. DENNEE: What about these?

5 MAYOR'S AGENT BYRNE: They're all  
6 numbered already.

7 (A conversation ensued between Mr. Dennee  
8 and the Mayor's Agent regarding the documents.)

9 MAYOR'S AGENT BYRNE: Yeah, that's helps  
10 a lot.

11 MR. DENNEE: Thank you.

12 MAYOR'S AGENT BYRNE: All right. So,  
13 just, Mr. Otten, do you promise that you have  
14 already and will continue to tell the entire  
15 truth to the best of your ability?

16 MR. OTTEN: Indeed.

17 MAYOR'S AGENT BYRNE: Very good.

18 Please proceed.

19 CROSS EXAMINATION

20 BY MS. BROWN:

21 Q. And I have one question that may have  
22 some small follow-ups depending on your answer.

1           You've mentioned, you've recited from the  
2   October 2013 Steve Callcott report about the  
3   covenants and whether or not this had to go back  
4   to the Advisory Council on Historic Preservation;  
5   is that correct?

6           A.   I referred to page 4 of that report, and  
7   I quoted from that report.

8           Q.   Um-hm. And are you aware of supplemental  
9   Office of Planning report which disposed of that  
10   office, and it was done through the Zoning  
11   Commission record?

12          A.   I'm not aware of that.

13          Q.   Okay.

14               MS. BROWN: That's all I have. Go ahead.

15               MAYOR'S AGENT BYRNE: So, what's the  
16   document that you just referred to?

17               MS. BROWN: It is the memo from Jennifer  
18   Steingasser, the Deputy Director of Development  
19   Review of Historic Preservation at the Office of  
20   Planning, and David Maloney, the State Historic  
21   Preservation Officer, dated May 22nd, 2014. And  
22   it's a supplemental report about the preservation

1 covenant and the enforcement of the covenant.

2 MAYOR'S AGENT BYRNE: Is that in the  
3 record?

4 MS. BROWN: It is not in this record, and  
5 I would be glad to submit it for the record since  
6 it goes directly to an issue that he raised.

7 MAYOR'S AGENT BYRNE: I think we should  
8 have it in the record.

9 MS. BROWN: Then I will provide it.

10 MAYOR'S AGENT BYRNE: And to the parties.

11 MS. BROWN: And I can read it into the  
12 record now. It's very short, what the conclusion  
13 is, if that would be helpful to you.

14 MAYOR'S AGENT BYRNE: Okay. Yes.

15 MS. BROWN: "In 1987, it is a condition  
16 of the transfer of the District of Columbia to  
17 the District from GSA and prior to its National  
18 Register listing, a preservation covenant was  
19 attached to the property. The covenant required  
20 that any rehabilitation and renovation work be  
21 undertaken in accordance with the Secretary of  
22 Interior's standards for rehab.



1           "The covenant states that if the SHPO did  
2 not agree with the plans, the District would  
3 request the comments of the Advisory Council on  
4 Historic Preservation, in accordance with 36  
5 C.F.R. Part 800." It then quotes, as Mr. Otten  
6 did, from the October 2013 HPRB report. And it  
7 says, it concludes that "to agree with is not  
8 standard terminology in either the Federal  
9 Section 106 or D.C. municipal review Processes  
10 and is an imprecise term in regards to the  
11 preservation review.

12           "Recognizing the finding of the HPRB and  
13 that the Applicant will need to establish that  
14 the proposed demolition will result in a project  
15 of special merit before the Mayor's Agent for  
16 Historic Preservation, the SHPO does not disagree  
17 with the plan and has no reason to conclude that  
18 the project will not be in compliance with the  
19 covenants."

20           MR. OTTEN: Okay. Given that I still  
21 uphold --

22           MS. BROWN: And that's -- no, no. I'm

1 finished with my questions.

2 MR. OTTEN: Well, I'm not finished with  
3 my answer. So, given that document --

4 MS. BROWN: And I asked for a  
5 clarification. I've asked my question, it was  
6 answered, whether or not the --

7 MAYOR'S AGENT BYRNE: Yes. You'll have a  
8 chance to speak about this. But let her proceed.

9 MS. BROWN: No, no. He answered the  
10 question that I posed to him, and I'm done. I  
11 have no more questions.

12 MAYOR'S AGENT BYRNE: Okay. All right.  
13 Fine.

14 MR. OTTEN: I'm holding to that quote. I  
15 mean, it's unequivocal in that case what was.  
16 And I'm not going to speak to here of what maybe  
17 pressure was put on to change that. But it is  
18 unequivocally stated in this report that it  
19 disagrees with the standards.

20 MAYOR'S AGENT BYRNE: Okay. What it  
21 states it states. And that's fine.

22 MR. OTTEN: That's right.

1           MAYOR'S AGENT BYRNE: All right. I think  
2 then we're ready to move to the public witnesses.  
3 But I want to tell the public witnesses that if  
4 we take a short break, I'll be able to listen  
5 with much greater attention. So let's just take  
6 a five-minute break, and then we'll be very happy  
7 to hear what people have to say.

8           (Whereupon, at 12:51 p.m., a recess was  
9 taken, to resume at 1:01 p.m.)

10          MAYOR'S AGENT BYRNE: Okay. I think  
11 we're ready to begin, please. And who would like  
12 to be the first person to speak among the public  
13 witnesses? Ma'am, would you like to start?

14          MS. HANRAHAN: No.

15          (Laughter.)

16          MAYOR'S AGENT BYRNE: Okay. Mr.  
17 Schullman, do you want to start? Thank you.

18          MALE VOICE: Mr. Schullman volunteers.

19          MS. FERSTER: Yes.

20          MAYOR'S AGENT BYRNE: Okay. Very good.  
21 Please state your name for the record, and when  
22 you're ready.

1 Whereupon,

2 JIM SCHULLMAN

3 was called as a witness and testified as follows:

4 DIRECT TESTIMONY

5 MR. SCHULLMAN: My name is Jim Schullman.

6 And I am an architect in the District of

7 Columbia. And I live at 631 E Street, Northeast.

8 MAYOR'S AGENT BYRNE: Good.

9 MR. SCHULLMAN: Dear Hearing Officer

10 Byrne: As you may recall from my testimony in

11 October of last year, I'm a registered architect

12 and the founder of Community Forklift, a surplus

13 and salvage building material outlet. I also

14 currently serve as the Treasurer of the Building

15 Materials Reuse Association.

16 Among other preservation efforts, I was

17 involved with the National Park Service

18 restoration of the Harry S. Truman home in

19 Independence, Missouri, various upgrades to

20 historic properties at the Navy Yard, and

21 renovations to historic homes and businesses in

22 Georgetown and on Capitol Hill.

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1           Given your ruling in April, with which I  
2 respectfully disagree, that the VMP project is  
3 one of special merit, I will limit the bulk of my  
4 comments to the question at hand of subdivision,  
5 though I still believe that the current design  
6 dishonors the historic role and highest and best  
7 use of the site. And demolishing the underground  
8 vaults is based on a mistaken twentieth-century  
9 presumption that the site has to bear the dynamic  
10 weight of heavy vehicles, such as automobiles.

11           As was articulated by discussion in the  
12 first hearing on this topic on May 18th,  
13 subdivision pertains to the potential  
14 distribution of ownership of the real estate that  
15 has been proposed for development. The proposed  
16 VMP subdivision plan mirrors their zoning schema,  
17 with lots subdivided so as to differentiate the  
18 various building types and massings on the site.

19           The subdivision of the site might make  
20 sense in a typical mixed-use green-field  
21 development, but the McMillan Park Reservoir is  
22 no typical development. It is one that has been

1 initiated by the District of Columbia Government  
2 by and for the people of the District of  
3 Columbia, with significant national historic  
4 assets spread across the site that require and  
5 deserve equal, ongoing protection in perpetuity.

6 I believe there is only one possible  
7 subdivision of the site in question that makes  
8 sense in this case -- unifying the whole existing  
9 block as one lot. This action would correspond  
10 with the proper continuity of ownership of the  
11 site by the District of Columbia.

12 If the District chooses to lease or long-  
13 term lease the property in the interest of  
14 economic or cultural development, maintaining one  
15 lot and one lot only will ensure the unification  
16 of the historic and economic protections for us  
17 as District citizens. It will also ensure that,  
18 should the unification of the historic and  
19 economic protection -- I'm sorry.

20 It will also ensure that, should the  
21 District of Columbia ill-advisedly sell or give  
22 away this property, the new owner will have to

1 treat the development and its historic resources  
2 that remain as one cohesive whole. If that  
3 requires a revised special zoning designation and  
4 more review by the Zoning Commission, I believe  
5 it would be worth it.

6           As it happens, I just returned from a  
7 trip to the St. Louis area, where I had the  
8 opportunity to visit the pre-Columbian site of  
9 Cahokia, with its amazing Monks Mound, larger in  
10 plan than the largest pyramid at Giza. It is  
11 sobering to have learned that this UNESCO  
12 Heritage Site on the Illinois side of the  
13 Mississippi River still faces ongoing pressure  
14 from development interests and that not one of  
15 the ancillary indigenous archeological sites in  
16 St. Louis proper, which was originally named  
17 Mound City, have survived.

18           Please, Mr. Byrne, with all due respect,  
19 let this not be the fate of the McMillan Park. I  
20 thank you for this opportunity to share my views.

21           MAYOR'S AGENT BYRNE: Thank you, Mr.  
22 Schullman. And let me say how much I admire

1 Community Forklift.

2 MR. SCHULLMAN: Oh. Thank you.

3 MAYOR'S AGENT BYRNE: An excellent  
4 community organization. So, thank you.

5 All right. Good. Mr. Otten, do you want  
6 to ask any questions?

7 MR. OTTEN: I'm good.

8 MAYOR'S AGENT BYRNE: Okay. Good. Thank  
9 you very much.

10 (The Witness was excused.)

11 MS. BROWN: Mr. Byrne, I guess we'll just  
12 continue these sequentially behind the other  
13 exhibits wherever we left off?

14 MAYOR'S AGENT BYRNE: Yes. So, what are  
15 we up to? M? M was the last one I think we did.  
16 The last one was the list of --

17 MS. MERRITT: The list of exhibits.

18 MAYOR'S AGENT BYRNE: The list of  
19 exhibits that Ms. Ferster wanted to put in. We  
20 labeled that M.

21 MS. MERRITT: And then, what are we  
22 calling these?



1           MR. DENNEE: Why don't we give that a  
2 single letter, and we'll have sub-exhibits.

3           MS. BROWN: Those were separate.

4           MS. MERRITT: N? This would be N, right?

5           MAYOR'S AGENT BYRNE: No, no. That one  
6 is a separate -- okay.

7           (Cross-talk.)

8           MR. DENNEE: I'm just trying to think of  
9 how can I ultimately do this? So it's up to you.

10          MS. BROWN: It was be DC for Reasonable  
11 Development Exhibits.

12          MAYOR'S AGENT BYRNE: Yes.

13          (Cross-talk.)

14          MAYOR'S AGENT BYRNE: Yes, it's their  
15 exhibit.

16          (Pause.)

17          MAYOR'S AGENT BYRNE: Okay. So, Mr.  
18 Schullman's written statement would be N.

19          (Opposition Exhibit N was marked for  
20 identification.)

21          MS. BROWN: N as in Nancy.

22          (Pause.)

1           MAYOR'S AGENT BYRNE: Welcome. Please  
2 state your name for the record.

3 Whereupon,

4           MARY PAT ROWAN  
5 was called as a witness and testified as follows:

6           DIRECT TESTIMONY

7           MS. ROWAN: All right. Thank you. My  
8 name is Mary Pat Rowan. I am a landscape  
9 architect and resident of the District of  
10 Columbia. And today I would like to deliver the  
11 testimony of the Committee of 100 of Nancy  
12 McWood, who has written the testimony. So it is  
13 her testimony, and I have copies on Committee of  
14 100 letterhead.

15          MAYOR'S AGENT BYRNE: Okay. Do we want  
16 to attach those?

17          MS. ROWAN: Yes. I have them.

18          MAYOR'S AGENT BYRNE: I need to get one  
19 myself.

20          MS. ROWAN: Oh, I'm sorry.

21          MS. MERRITT: Oh, here. Pass this one  
22 back.

1 MS. ROWAN: There you are.

2 MAYOR'S AGENT BYRNE: So, this will be O.

3 (Opposition Exhibit O was marked for  
4 identification.)

5 MS. BROWN: And I do have -- I know this  
6 proceeding is not for a zoning adjustment and not  
7 the Zoning Commission.

8 MAYOR'S AGENT BYRNE: Yeah.

9 MS. BROWN: But typically, it's presented  
10 by the person who is delivering the written  
11 statement. And otherwise, it should just speak  
12 for itself.

13 MAYOR'S AGENT BYRNE: Well, I guess it's  
14 not fair to her. And I mean, certainly we would  
15 read it in any event. But if you would prefer to  
16 read it, I will let you.

17 MS. ROWAN: I would prefer to read it if  
18 I may.

19 MAYOR'S AGENT BYRNE: Yes, go ahead.

20 MS. ROWAN: Thank you.

21

22 MS. ROWAN: There are two subdivisions of

1 historic landmarks in the District of Columbia  
2 that are instructive in examining how the Mayor's  
3 Agents should approach the subdivision of another  
4 landmark property, McMillan Sand Filtration Site.

5           Rosedale, one. Rosedale is an  
6 eighteenth-century estate in the heart of  
7 Cleveland Park. The property fell into disrepair  
8 and was marred by the construction of three  
9 institutional buildings that eclipsed the 1790  
10 Rosedale farmhouse. When the property was placed  
11 on the market in 2002, the community saw an  
12 opportunity to save this historic site from  
13 further damage and to enhance its unique  
14 waterfall lawn.

15           A creative and minimal subdivision was  
16 proposed that included demolition of the  
17 institutional buildings and replacement with  
18 eight developable single-family lots behind the  
19 historic farmhouse, out of significant view  
20 sheds. The farmhouse would be restored to  
21 residential use and rehabilitated, as would the  
22 cottage, and the remaining three-acre lawn would

1 be fully restored.

2           The Mayor's Agent found that the  
3 subdivision was in the public interest because it  
4 implemented the purpose of the Historic District  
5 Preservation Act of '78. That purpose is to  
6 retain and enhance historic land. In every way,  
7 the Rosedale subdivision fulfilled that  
8 aspiration, and today the historic site is  
9 visited daily by District residents and visitors,  
10 and is prized as an example of what a small  
11 neighborhood can do to protect an historic site.

12           Tregaron is the other. It is a 20-acre  
13 residential estate designed by Charles Platt,  
14 notable country estate architect, and Ellen  
15 Biddle Shipman, a renowned landscape designer.  
16 The Washington International School has resided  
17 in the mansion and the surrounding support  
18 buildings for many years. But the remaining 14  
19 acres were privately owned and marketed for  
20 development.

21           But the Cleveland Park neighborhood  
22 organized a fight to fight development proposals

1 over a 20-year period. They argued that the site  
2 was unique and important and that the woodlands  
3 and garden should be restored. Developers argued  
4 that the site was overgrown and nothing of  
5 significance remained and that a better use,  
6 housing, could be developed on the acreage.

7           A creative and painstaking deal was  
8 negotiated among the school, the neighborhood  
9 that formed the conservancy, and the private  
10 owner. The deal was premised on the creation of  
11 eight developable single-family residential lots.  
12 The location of the lots was the primary  
13 challenge. And in the end, the selections had  
14 more to do with protecting the landmark than  
15 marketability.

16           Two of the lots were on a dense  
17 residential street at the school entrance, where  
18 there is no existing Shipman garden plans. One  
19 lot was in the far corner of the property, and  
20 this lot was only approved after architectural  
21 plans demonstrated that a low-slung house  
22 designed by a Seattle architecture firm could be

1 built out of the view shed of the mansion and  
2 important landscape features.

3           The remaining lots located in the  
4 hillside below the bridal path and woodlands were  
5 conceived with houses designed as features of the  
6 hillside that would respect the natural and man-  
7 made characteristics of this least-significant  
8 part of the site.

9           The Mayor's Agent found that the  
10 subdivision was necessary in the public interest  
11 because of its exemplary architecture, special  
12 features of land-use planning, and quote, "social  
13 benefits, having a high priority for community  
14 services."

15           He quoted the HPRB's determination that  
16 subdivision would result in an unusual and  
17 substantial historic preservation accomplishment  
18 with clear benefits to the public and have a  
19 direct relation to the public interest in  
20 perpetuating, enhancing, and promoting  
21 appreciation of one of the City's unique cultural  
22 assets.

1           Today, the Tregaron Conservancy, has  
2   rehabilitated much of the woodlands and restored  
3   many significant architectural features. Like  
4   Rosedale, Tregaron is visited daily by visitors  
5   and used as an historic horticultural  
6   environmental laboratory for schoolchildren,  
7   scientists, and preservationists.

8           Now, we're at McMillan. McMillan is a  
9   Frederick Law Olmsted, Jr., designed industrial  
10   park envisioned to perform a critical utility  
11   function in the midst of a beautiful, undulating  
12   landscape. Similar to Rosedale and Tregaron,  
13   there is a neighborhood that is working  
14   diligently to preserve McMillan as a unique  
15   historic site that contributes significantly to  
16   the narrative of the District of Columbia.

17           Like Rosedale and Tregaron, developers  
18   argue that the site has lost its significance and  
19   that is beyond repair, let alone restoration.  
20   Similar to Rosedale and Tregaron, neighborhood  
21   residents envision minimal development to  
22   facilitate restoration and use of the site by the



1 public.

2 All three sites are unified that at the  
3 time of subdivision maintained their original  
4 boundaries and site organization. Each site's  
5 owners and neighbors concluded that development  
6 was the practical tool to resolve the  
7 development-preservation tug-of-war.

8 And in each case, developers envisioned  
9 massive buildings that would destroy the  
10 landmark. And in each case, neighbors envisioned  
11 a restrained, very carefully located development  
12 that would not detract from the view shed and  
13 important land features and would allow new  
14 public uses of the site.

15 As someone who was deeply involved with  
16 the subdivision planning and negotiation terms at  
17 Rosedale and Tregaron -- this is Nancy McWood --  
18 I find -- I, Nancy -- the big difference between  
19 the protection of those landmarks and what is  
20 unfolding with the McMillan subdivision proposal  
21 is a change in attitude of the Historic  
22 Preservation Review Board and the Historic

1    Preservation Office.

2                    Then, protection and preservation in the  
3    face of very strong development pressures was the  
4    hard, but determined focus of HPRB and HPO.  Now  
5    it seems that development interests have finally  
6    found a landmark where there is no pushback from  
7    minimal intrusion and development is not seen as  
8    a means to a preservation end, but as the goal.

9                    It is left up to the Mayor's Agent to  
10   find that this subdivision plan fails to offer  
11   exemplary architecture or meritorious land-use  
12   planning premised on enhancing the character of  
13   the entire landmark, because it will destroy the  
14   character of the landmark.  This subdivision plan  
15   would shroud the silos and regulator houses like  
16   the institutional buildings once shrouded  
17   Rosedale.  And the massive development scheme  
18   would obliterate the landscape that, like  
19   developers had envisioned at Tregaron.

20                    Surely, Rosedale and Tregaron won't be  
21   the last examples of subdivision as a tool of  
22   preservation that maximizes parkland settings --

1 not the maximum development of the site.

2 Submitted by Nancy McWood.

3 MAYOR'S AGENT BYRNE: Thank you very  
4 much.

5 I guess the only thing I would observe is  
6 that it doesn't seem fair to say that there's no  
7 pushback.

8 (Laughter.)

9 MAYOR'S AGENT BYRNE: I understand the  
10 points. From the Government, I understand.

11 MS. ROWAN: All right. All right. Yes,  
12 I felt that a little bit misleading.

13 MAYOR'S AGENT BYRNE: No, that's quite  
14 all right. That's quite all right. Okay. Good.  
15 Thank you very much. I appreciate that.

16 MS. ROWAN: Thank you.

17 MAYOR'S AGENT BYRNE: Who would like to  
18 go next?

19 MS. HANRAHAN: I'll go next. I'm brave  
20 now.

21 MAYOR'S AGENT BYRNE: All right. Good.

22 (Laughter.)

1 Whereupon,

2 DEBBY HANRAHAN

3 was called as a witness and testified as follows:

4 DIRECT TESTIMONY

5 MS. HANRAHAN: And also, as all of these  
6 witnesses, I want to stress none of us have  
7 anything to gain from this. In fact, many of us  
8 have a lot to lose because, as public advocates,  
9 we individually shoulder enormous legal costs. I  
10 don't want to tell you what it is, but it could  
11 be as high as \$5,000 apiece for each of us to  
12 mount this case against this development.

13 Anyway, my name is Debby Hanrahan. And I  
14 want to say that this case is about the  
15 subdivision of a national historic site and a  
16 local treasure. The result would be taking  
17 publicly owned parkland and transferring most of  
18 it to developers for an enormous, inappropriate  
19 development and committing a huge amount of  
20 taxpayers' money for this dubious deal.

21 All in the name of moderate affordable  
22 housing, which is defined not by D.C. incomes,

1 but by the regional ones, at a moderate income  
2 calculated at about \$80,000 a year. Some units  
3 would be for those earning \$40,000 or less.

4 It is unjust and hypocritical of the  
5 City's politicians, who themselves refuse to  
6 adequately fund moderate- and low-income housing,  
7 to expect the Mayor's Agent, whose job is to  
8 protect historic properties, to perform this task  
9 for them.

10 Your decree approving this would spell  
11 the destruction of some 80 percent of the City-  
12 owned landmark, McMillan Park, which is of  
13 national importance. The 80 percent figure comes  
14 from Maria Casarella, who stated it from her seat  
15 on the Historic Preservation Review Board in  
16 2014.

17 The vast carnage that would be inflicted  
18 on McMillan greatly overwhelms the housing  
19 offering under "special merit." If in fact all  
20 that moderate-income housing would actually be  
21 realized, this should also be balanced in your  
22 opinion by the loss of most of the historic

1 parkland in an area sorely deficient in parks.  
2 Also, serious consideration should be given to  
3 taxpayers' money that would be required in this  
4 deal to prepare the site and build the streets,  
5 that would be privately owned, meaning that  
6 developers get all the money from meters and  
7 meter fines, and probably tickets, too.

8           The millions spent already paid by the  
9 City -- some \$6 million for the developers,  
10 architects, lawyers, engineers, PR firms, et  
11 cetera -- is really appalling. The developers  
12 have no money in this game, and this dubious  
13 arrangement merits the destruction of a  
14 fascinating and unique national landmark.

15           You are asked by the City to bless the  
16 destruction of McMillan Park in the face of the  
17 numerous restrictions written by the City and  
18 various federal agencies that specifically limit  
19 overbuilding there.

20           Particularly telling for me is that at  
21 this very time that the D.C. City Council members  
22 support privatization and the destruction of

1 Barry Farms, where 434 families will lose their  
2 homes, and a similar situation is true for the  
3 residents of a large apartment building by the  
4 name of Kenilworth, which is occupied by 260 low-  
5 income families. These 700 families will be  
6 evicted, and few will be allowed to return due to  
7 income and past law infractions.

8           How ironic that hundreds of lower- and  
9 moderate-income families will be thrown out on  
10 the street at Barry Farms and Kenilworth by  
11 decisions by the Council and Mayor while you are  
12 being asked to declare special merit for only 119  
13 of the meager affordable housing units offered  
14 here -- 85 for seniors in parcel four, 9 units in  
15 row-house parcel five, and 25 units in apartment  
16 parcel two. And that is if they actually get  
17 built.

18           A hypocritical game the politicians are  
19 playing to enrich their developer friends -- and  
20 it is you who are being asked to put the lipstick  
21 on this pig.

22           As most of us know, the Tregaron and the

1 Rosedale projects are in Ward 3. Hm. One has to  
2 say it is McMillan's bad luck to be far away, in  
3 Ward 5, where out of sight and mind of the City's  
4 elite, it can be used and treated very badly.

5 I urge you as our agent not to  
6 participate in this double standard of treatment  
7 and preserve our great McMillan Park.

8 MAYOR'S AGENT BYRNE: Thank you very  
9 much. Good.

10 Would you like to go next?

11 MS. HANRAHAN: Oh, I have copies.

12 MAYOR'S AGENT BYRNE: Oh, you do? Okay,  
13 good.

14 MS. HANRAHAN: I'm sorry.

15 MAYOR'S AGENT BYRNE: Okay.

16 MS. HANRAHAN: Listen, I am not that  
17 brave. And this kind of thing rocks me.

18 (Laughter.)

19 MS. HANRAHAN: There you go. Thank you.

20 MAYOR'S AGENT BYRNE: So this will be --  
21 Ms. Hanrahan will be Exhibit P.

22 (Opposition P was marked for



1 identification.)

2 MS. DIENER: Hi.

3 MAYOR'S AGENT BYRNE: Hi. Please have a  
4 seat.

5 MS. DIENER: Thank you.

6 MAYOR'S AGENT BYRNE: You have testimony  
7 -- you have them, too. Okay. So, let's see.  
8 Did you have some for them?

9 MS. DIENER: I don't, but I can email  
10 copies in the course --

11 MAYOR'S AGENT BYRNE: Yes.

12 MS. DIENER: I am going to excerpt that  
13 testimony. I'm not going to go through it.

14 MAYOR'S AGENT BYRNE: Okay. I think we  
15 probably ought to have three copies of that, if  
16 you don't mind. But you can go ahead.

17 MS. DIENER: Okay. Thank you. Thank you  
18 for having this.

19 MAYOR'S AGENT BYRNE: Glad you're here.  
20 Whereupon,

21 ROBIN DIENER

22 was called as an expert witness and testified as

1 follows:

2 DIRECT TESTIMONY

3 MS. DIENER: So, my name is Robin Diener.  
4 I live in the Dupont Circle area of the City.  
5 I'm here kind of responding to what I feel is a  
6 little bit of a lack of common-sense application  
7 of the little bit that I understand about the  
8 law, because I'm not a lawyer and I'm not an  
9 expert in any way in these matters.

10 But I am a linguist, and I'm a reading  
11 teacher. I teach reading to adults who have not  
12 been able or been taught to learn to read  
13 adequately in their lives. And they bring to  
14 their understanding of the world such an  
15 incredible level of common sense because they  
16 don't have access to very complicated things in  
17 terms of reading and writing. So I may be a  
18 little bit influenced by them.

19 I became aware of the McMillan situation  
20 as the Chairman of the Parks and Environment  
21 Committee of the Civic Association of the Dupont  
22 Circle area. And we take care of several small

1 parks. And we get down on our hands and knees,  
2 and we plant plants, and we rake the leaves, and  
3 we mulch and take care of some of these public  
4 spaces for the benefit of everyone, to look at  
5 them, and also, the birds and the pollinators  
6 that, believe it or not, do use the little  
7 triangle parks that -- you might not know that,  
8 but we see them all the time. It's quite  
9 fascinating.

10 Through the City's Parks Partners  
11 program, I learned more about McMillan. That's a  
12 great program, by the way, that the City does.  
13 It brings together people like myself who are all  
14 working on these things. And the project, as  
15 I've come to understand it, just really doesn't,  
16 to me, provide what would be considered special  
17 merit.

18 It seems, you know, the word "special" is  
19 out of the ordinary and that "merit" is a very  
20 good thing. And this seems to be, on the one  
21 hand, destroying something that has huge inherent  
22 merit from the historic preservation point of

1 view, but then also as a green space.

2 I guess there's been a lot of testimony  
3 that the view sheds would not be affected. But  
4 from what I can see, having visited the site,  
5 they would be greatly. I've heard from visitors  
6 to some of the tourist sites around there and  
7 some of the tour guides, that they feel the sites  
8 would be interfered with.

9 And in an age of childhood obesity,  
10 there's no running paths in the plan, no exercise  
11 park course. There's not even like a special  
12 playground for the children in the hospital who  
13 might, as they're getting better, be able to come  
14 over and benefit from them. It seems like  
15 certain basic things that, had we thought about  
16 it creatively, would be included or not.

17 And in an age of climate change and  
18 uncertainty, of pollinator die-off that we hear  
19 about all the time, honestly, the land as it is  
20 today, a simple grassland open space, is more  
21 valuable than what is being proposed. It's a  
22 giant green roof.

1           There isn't even a dog park in the plan  
2 as it now stands. And there's no library. I  
3 actually am employed part-time to work on library  
4 issues as an advocate. And I was surprised to  
5 find out that there was a plan, a recommendation  
6 from citizens -- I think it goes back to 1995,  
7 but the plan was actually published in 2002 that  
8 specifically requests a library.

9           I attend all the Library Facility  
10 Committee's meetings. I've never heard this  
11 mentioned. And in fact, talking to the Board of  
12 Library Trustees, they say they've never been  
13 asked. So, again, the common-sense thing. If  
14 the Office of Planning is producing reports on  
15 behalf of the public and taking time and money to  
16 do so, why do they not filter up to the parties  
17 that would make the decisions, such as the Board  
18 of Library Trustees, which probably is not your  
19 purview in the slightest, but to give you the  
20 background where I'm coming from?

21           Also, there's no comprehensive  
22 transportation plan. In all of the years that

1 this has been worked on, no metro has been  
2 proposed. There's no plan for streetcars to come  
3 there.

4           And then, something else that really  
5 seems to me to be a giant omission is  
6 consideration of the site, including the historic  
7 caverns and so forth, as a tourist site.  
8 Washington, D.C., is this giant magnet for  
9 tourists. Why would we not consider this as the  
10 kind of site that are being adaptively reused  
11 around the world, and not just a little tiny  
12 piece of it that's a suggestion, but indeed, the  
13 whole thing?

14           And again, a lot of the development that  
15 we're talking about could go underground. The  
16 recreation summer and things like that could be  
17 done there. Certain kinds of retail that the  
18 community specifically asked for could well be  
19 done.

20           I feel that this VMP plan just fails to  
21 comprehensively incorporate the public's  
22 suggestions and requests.

1           So on my introduction, very quickly, to  
2 the actual report that you have here. McMillan  
3 is a part of the Emerald Necklace, and that has  
4 been well established. No one denies that. So,  
5 Emerald Necklace. Emeralds -- those are gems.  
6 They're of huge value. Everyone understands how  
7 special an emerald is. And a necklace is for  
8 decoration, ornamentation. It's for our  
9 pleasure. Why would we want to destroy or take a  
10 piece out of an emerald necklace is hard to  
11 understand.

12           There's been a lot of testimony that this  
13 was always a park. I think, except for the time  
14 it was closed off and was not used as a park, but  
15 it still was a park. But -- and you actually  
16 cautioned us, and you gave a sort of -- your  
17 understanding that perhaps some of what we have  
18 to do is political and to go to the D.C. Council  
19 and others who can influence some of these  
20 decisions. But there are talking points that  
21 have been developed by the Fontaine Company with  
22 taxpayer money, as we understand it. One of the

1 talking points is this was never a park.

2           This has been done against the facts and  
3 against the citizens who support this remaining a  
4 park, with our own money. So, when you tell us  
5 to go and do that, and I totally respect that  
6 that is what we have to do. Believe me, we have  
7 tried. And we're not being paid to do this. And  
8 our own money is going to pay people to do it  
9 against us. So that is very hard to swallow.

10           And even the Chairman of the City Council  
11 said to the Deputy Mayor for Development, or it  
12 might have been -- I'm sorry -- the new Director  
13 of Planning, that this was not nice. Which is a  
14 kind of simple, commonsense thing to say that  
15 actually has great ramifications.

16           Okay. So it's an enormous green roof  
17 over 20 acres. Why are we not just keeping that?  
18 There is a question about the construction of  
19 this tunnel by D.C. Water. It necessitates, as I  
20 understand it, a large like 30-foot-wide grate.  
21 And that will have to be protected so that nobody  
22 falls into it and nothing goes into the water.



1 So, is this a temporary thing? How long will it  
2 be fenced off? Will it ever be open to the  
3 public? Will you ever be able to have that part  
4 of the land back?

5 Dupont Circle is at the very bottom of  
6 the edge of the City. It's called Midcity. And  
7 under Parks and Rec's plan for improving public  
8 access to parks, and also under another plan that  
9 I've included here, Ideas to Achieve Full  
10 Potential of Washington's Parks and Open Spaces,  
11 with the National Capital Planning Commission,  
12 D.C. Government, and the National Parks Service,  
13 from 2010, recommendations were made to acquire  
14 more parkland for D.C.

15 So, to me, getting rid of 26 acres flies  
16 in the face of that. But at any rate, my own  
17 personal experience, Dupont Circle is at the edge  
18 of this Midcity, where it's considered a park  
19 desert and that more parkland is needed. So that  
20 is hard to understand.

21 I've cited a few things from the  
22 Comprehensive Plan. I think that, actually,

1 they've already been brought out. And my last  
2 thought on this -- and thank you very much for  
3 bearing with me. Often, people who are trying to  
4 get things done in the Government and through  
5 development say the public gets in the way. You  
6 know, we've got to make this happen. The money  
7 is on the table. We don't want it to go away.

8           And I feel that there is a way forward  
9 from this, for what it's worth, to understand.  
10 The public asked for an international design  
11 competition. Such a thing could still be done.  
12 Vision McMillan could be one of the competitors.  
13 They have such a great plan, let's see what else  
14 comes up and whether people agree that this is  
15 the best thing we could do.

16           And unfortunately, that isn't being done.  
17 I think we could go forward from this and carry  
18 that out and see what comes up. But an  
19 incredible opportunity to creatively reuse this  
20 space, incorporating the historic, bringing in  
21 tourism, improving transportation in D.C., and  
22 providing this giant green space, which may to

1 certain council members not look like a park. I  
2 assure you it looks like a park to the birds and  
3 the butterflies and would look like a park to the  
4 children of D.C. So, thank you very much for the  
5 chance. I appreciate it.

6 MAYOR'S AGENT BYRNE: Thank you. Thank  
7 you very much, Ms. Diener.

8 All right. I think there's -- I think  
9 it's your turn.

10 Whereupon,

11 EMILY RODENER

12 was called as an expert witness and testified as  
13 follows:

14 DIRECT TESTIMONY

15 MS. RODENER: I have no written testimony  
16 this morning.

17 MAYOR'S AGENT BYRNE: Okay. That's fine.

18 MS. RODENER: I came to sit face-to-face  
19 with somebody from D.C. Government and say my  
20 name is Emily Rodener. I'm a Bloomington  
21 resident. I'm a parent of two small children  
22 ages three and five. And I'm asking that this be

1 preserved for the intent that it was developed by  
2 Olmsted as a park open to my children and other  
3 children of D.C.

4 I don't think that the affordable housing  
5 outlined in this VMP plan, especially the short-  
6 term by which it might be available, outweighs  
7 the long-term needs for public parks in D.C. and  
8 green space. If you look at the totality of Ward  
9 5 and Ward 1, there's nothing. And we're not  
10 short in this area of development. The  
11 development is wonderful, and it's creative. And  
12 it has merit. And for me, the loss that would be  
13 incurred by destroying this beautiful open green  
14 space isn't justified by this application for  
15 special use.

16 MAYOR'S AGENT BYRNE: Okay.

17 MS. RODENER: That's it.

18 MAYOR'S AGENT BYRNE: Good. Thank you.  
19 We appreciate that.

20 MS. HANRAHAN: How old are your kids?

21 MS. RODENER: Three and five. They go to  
22 school just up the hill from the reservoir at

1 Bruce-Monroe at Parkview.

2 MS. HANRAHAN: And they need a park?

3 MS. RODENER: They have no park. We have  
4 one park in Le Droit park. There is zero parks  
5 in the neighborhood of Bloomingdale, which is  
6 experiencing a population boom right now.

7 MAYOR'S AGENT BYRNE: Yeah.

8 MS. RODENER: And I don't think the City  
9 understands the population boom, and we don't  
10 want to go. I've lived in the neighborhood for  
11 12 years. And I don't want to leave just because  
12 I have children. But I feel like D.C. wants me  
13 to leave. And I don't want to go.

14 We have a park at V and 2nd Street,  
15 Northwest, which actually belongs to DCPS. And  
16 Bianne Nadeay reiterated two weeks ago at a play-  
17 date in our neighborhood that that land can be  
18 taken back at any time. And it's simply a  
19 playground. It has no true open green space.

20 MAYOR'S AGENT BYRNE: Okay. Thank you.

21 Thank you. All right. I think we've  
22 heard from everyone who wants to be heard from.

1 I think that's right. Okay.

2 So, as we've discussed, the plan now will  
3 be for the parties have an opportunity to submit  
4 written arguments to me through the Historic  
5 Preservation Office. And we'll set the due date  
6 as two weeks after the issuance or the sending to  
7 the parties of the transcript from this hearing.  
8 Okay? Okay.

9 MS. BROWN: Can we ask how long we  
10 anticipate the transcript will take?

11 THE COURT REPORTER: That's for me?

12 MS. BROWN: Yes.

13 THE COURT REPORTER: I'm not usually put  
14 on the record like that.

15 (Laughter.)

16 MS. BROWN: I'm sorry.

17 MR. DENNEE: Ten days, usually.

18 THE COURT REPORTER: Ten days, which is  
19 about two weeks.

20 MAYOR'S AGENT BYRNE: Ten days, usually.

21 THE COURT REPORTER: Yes. Ten business  
22 days, that is.

1           MAYOR'S AGENT BYRNE: Ten business days,  
2 usually. Okay. All right.

3           Well, I want to thank everyone for their  
4 patience and the obvious care with which they  
5 have brought their views. And I'll do the best I  
6 can. Thank you.

7           MS. BROWN: May I ask one question that  
8 pertains to the other case, for the demolition,  
9 where there was a request for a corrected order?  
10 Does the Mayor's Agent intend to issue an order  
11 about whether you're going to grant that?

12           MAYOR'S AGENT BYRNE: Oh. Well, I don't  
13 know that I should go into that without Ms.  
14 Ferster here.

15           MS. BROWN: Oh, okay. Yeah. Sorry.

16           MAYOR'S AGENT BYRNE: Yeah. Okay. Thank  
17 you all.

18           (Chorus of "Thank you.")

19           (Whereupon, at 1:35 p.m., the proceedings  
20 concluded.)

21

22